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# TEXAS REGISTER

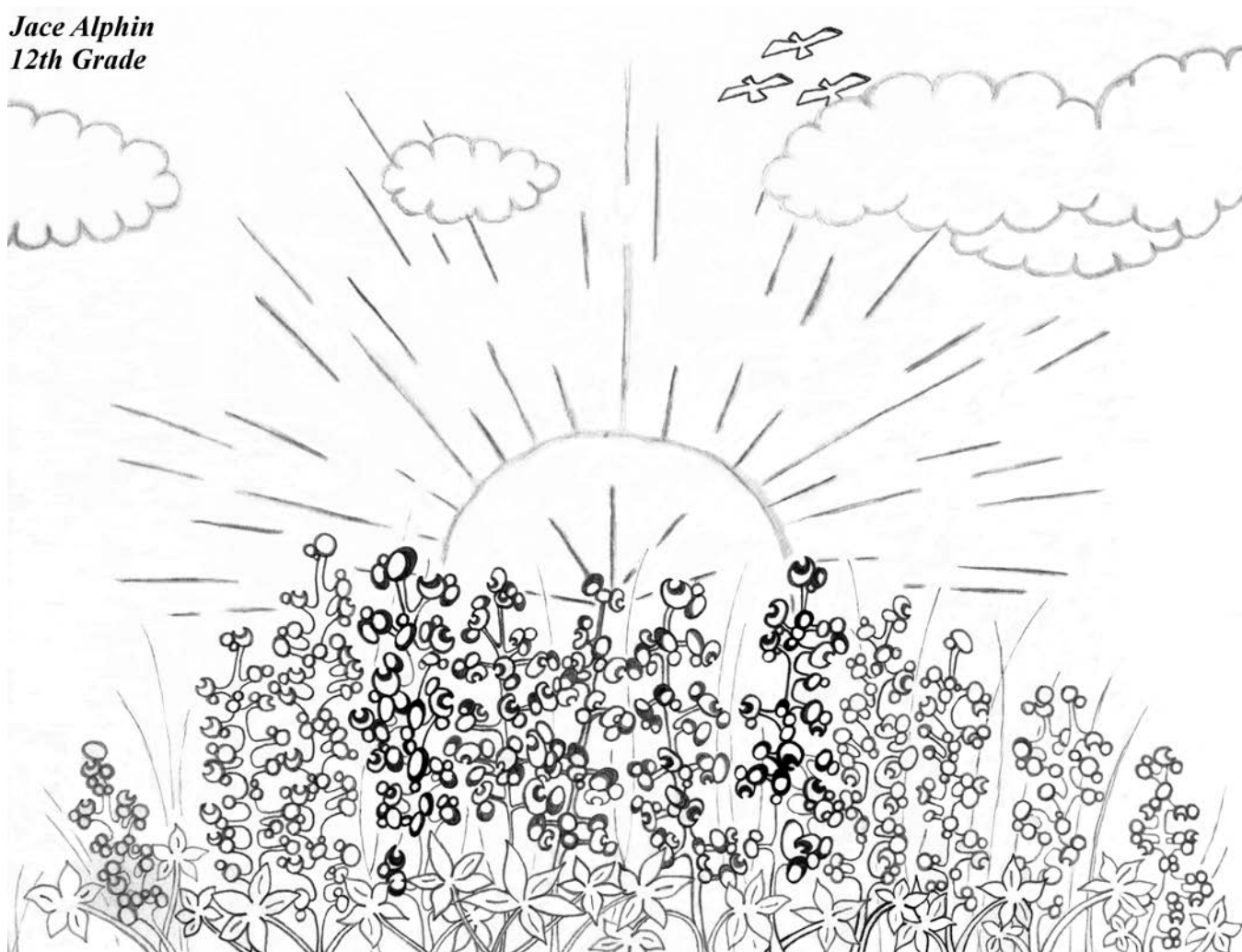
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*Pages 2807 - 2920*

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*Jace Alphin  
12th Grade*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for March 19, 2013

Promoted to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas with all rights, privileges and emoluments appertaining to this office, effective March 23, 2013, Gerald R. Betty of Austin.

### Appointments for March 28, 2013

Designating Manuel Cavazos, IV as presiding officer of the Credit Union Commission for a term at the pleasure of the Governor. Mr. Cavazos is replacing Thomas Butler of Deer Park as presiding officer.

### Appointments for April 11, 2013

Designating Daniel Wong as presiding officer of the Texas Board of Professional Engineers for a term at the pleasure of the Governor. Dr. Wong is replacing G. Kemble Bennett of College Station as presiding officer.

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Dallas Barrington of Silsbee (replacing David Matthew of Georgetown who resigned).

Rick Perry, Governor

TRD-201301720



## Proclamation 41-3317

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, record high temperatures, preceded by significantly low rainfall, have resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

WHEREAS, prolonged dry conditions continue to increase the threat of wildfire across many portions of the state; and

WHEREAS, these drought conditions have reached historic levels and continue to pose an imminent threat to public health, property and the economy; and

WHEREAS, this state of disaster includes the counties of Archer, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Blanco, Borden, Bosque, Bowie, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Callahan, Cameron, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Duval, Eastland, Edwards, Ellis, Erath,

Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Grayson, Grimes, Guadalupe, Hale, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hill, Hockley, Hood, Hopkins, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Mason, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Refugio, Roberts, Rockwall, Runnels, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Uvalde, Val Verde, Waller, Washington, Webb, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Yoakum, Young, Zapata and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities..

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 22nd day of March, 2013.

Rick Perry, Governor

TRD-201301721



## Proclamation 41-3318

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, record high temperatures, preceded by significantly low rainfall, have resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

WHEREAS, prolonged dry conditions continue to increase the threat of wildfire across many portions of the state; and

WHEREAS, these drought conditions have reached historic levels and continue to pose an imminent threat to public health, property and the economy; and

WHEREAS, this state of disaster includes the counties of Andrews, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Grimes, Guadalupe, Hale, Hamilton, Hansford, Hardeman, Hardin, Harris, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hill, Hockley, Hood, Hopkins, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Motley, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Refugio, Roberts, Rockwall, Runnels, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Waller, Washington, Webb, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Wood, Yoakum, Young, Zapata and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 18th day of April, 2013.

Rick Perry, Governor

TRD-201301722

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#### Proclamation 41-3319

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, do hereby certify that the explosion that occurred in West, Texas, on April 17, 2013, has caused a disaster in McLennan County in the State of Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the county listed above based on the existence of such disaster and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that disaster.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this disaster are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 18th day of April, 2013.

Rick Perry, Governor

TRD-201301723

◆ ◆ ◆

# THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

## Requests for Opinions

**RQ-1122-GA**

### Requestor:

The Honorable Patricia Harless  
Chair, Committee on Environmental Regulation  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Authority to create overlapping emergency services districts that provide duplicative services and levy additional ad valorem taxes (RQ-1122-GA)

**Briefs requested by May 24, 2013**

**RQ-1123-GA**

### Requestor:

Mr. Robert Ed Sturdivant  
Fort Bend County Auditor  
301 Jackson Street, Suite 533  
Richmond, Texas 77469  
Re: Whether an individual may serve as county clerk when the individual's spouse serves as a justice of the peace in the same county (RQ-1123-GA)

**Briefs requested by May 20, 2013**

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-201301724  
Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: May 1, 2013

◆ ◆ ◆

## Opinions

**Opinion No. GA-1002**

The Honorable Joe Shannon, Jr.

Tarrant County Criminal District Attorney

Tim Curry Criminal Justice Center

401 West Belknap

Fort Worth, Texas 76196

Re: Whether a county auditor has a right to access inmate property in a county jail to compare it with inmate property receipts (RQ-1096-GA)

## S U M M A R Y

Sections 112.006 and 115.001 of the Local Government Code authorize a county auditor to access inmate property that a sheriff stores at the county jail, subject to the sheriff's reasonable conditions on that access.

### Opinion No. GA-1003

The Honorable Dan Patrick

Chair, Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Texas Constitution prevents local political subdivisions from recognizing domestic partnerships by granting benefits previously only available to married couples (RQ-1097-GA)

## S U M M A R Y

Article I, section 32 of the Texas Constitution prohibits political subdivisions from creating a legal status of domestic partnership and recognizing that status by offering public benefits based upon it.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-201301711  
Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: April 30, 2013

◆ ◆ ◆

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 1. AGENCY ADMINISTRATION

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 19 TAC §1.18

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §1.18, concerning the operation of education research centers. The amendments related to Texas Education Code, §1.005, clarify the meeting schedule of the Joint Advisory Board and requirements of the centers to report any security breach.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the amended section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Brown has determined that for each year of the first five years the amended section is in effect, the public will benefit from having faculty information posted in a manner that is consistent across institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Susan E. Brown, Assistant Commissioner for Planning and Accountability, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752, [susan.brown@theccb.state.tx.us](mailto:susan.brown@theccb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §1.005, Education Research Centers; Sharing Student Information, which provides the Coordinating Board with authority to adopt rules pertaining to the sharing of student information.

The amendments affect Texas Education Code, §1.005, Education Research Centers; Sharing Student Information.

###### *§1.18. Operation of Education Research Centers.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Confidential information as applied to data provided to an Education Research Center (ERC) by Texas Education Agency

(TEA) or the Texas Higher Education Coordinating Board (THECB) [~~(CB)~~] includes all student-level data, regardless of the source of that data, including any data cells small enough to allow identification of an individual student. All social security numbers, student names, student birthdates and data cells containing between one and four students, inclusive, are confidential.

(3) Small data cells are [~~will be considered~~] any cell containing between one and four students inclusive. Information may not be disclosed where small data cells can be determined through subtraction or other simple mathematical manipulations or subsequent cross-tabulation of the same data with other variables. ERCs [~~Institutions~~] may use any of the common methods for masking including:

(A) - (B) (No change.)

(C) any methodology approved by the TEA and THECB [~~CB~~].

(4) Sponsoring ERC is a Texas public institution of higher education that is awarded a contract to be an ERC or TEA or THECB. [References to the CB shall also be deemed to include the Commissioner of Higher Education. References to the TEA shall also be deemed to include the Commissioner of Education.]

(5) Texas Higher Education Coordinating Board--References to the THECB shall also be deemed to include the commissioner of higher education.

(6) Texas Education Agency--References to the TEA shall also be deemed to include the commissioner of education.

(b) Purpose.

(1) ERCs may be established by joint approval of the commissioner of education and the THECB [~~CB~~].

(2) An ERC may only be established at a sponsoring public institution of higher education (IHE) in Texas; but may be awarded to a consortium of such institutions. An ERC must be physically located within Texas and must retain all data at that location under the direct control of the sponsoring ERC and approved by TEA and THECB.; except for secure off-site data back-up in accordance with written procedures approved by the Joint Advisory Board. Student level data may not be provided to a researcher at a location other than a Research Center or the THECB or a public institution of higher education located in Texas that is an acknowledged consortium member of the Research Center.

(3) [(2)] The THECB [~~CB~~] is responsible for general oversight, technical assistance, and state support of ERCs, except as otherwise provided in this chapter. All policy decisions and rulemaking shall be jointly made and approved by TEA and the THECB [~~CB~~].

(4) [(3)] Sponsoring IHEs [~~institutions of higher education~~] are responsible for all equipment, salaries and other operating costs of an ERC, including staff and equipment at TEA and the THECB [~~CB~~]



necessary to prepare and maintain data for the ERCs, as well as reasonable reimbursable expenses of the joint advisory board. Costs at TEA and THECB will include up to two ~~[be limited to one]~~ full-time equivalent employees ~~[employee]~~ at each agency along with associated data storage costs as set by DIR for the data center consolidation rates unless otherwise agreed to by the TEA, THECB [CB], and the ERCs.

(c) Joint Advisory Board.

(1) The commissioner of education and the commissioner of higher education shall co-chair a Joint Advisory Board [an advisory board] to review and approve research involving access to confidential information and to adopt policies governing ERC operations. Each commissioner may delegate to an agency employee the ability to act as co-chair and vote on matters coming before the Joint Advisory Board.

(2) The commissioner of education and the commissioner of higher education shall jointly appoint up to ten additional members to the Joint Advisory Board. All research involving access to confidential information must be approved by the Joint Advisory Board [said board].

(3) - (4) (No change.)

(5) Each year, the Joint Advisory Board shall identify priority research areas for ERC study. Fifty percent of the new proposals each year should address priority research areas.

(d) Operation.

(1) An ERC may operate only under written authorization by the commissioner of education and the THECB [CB]. Status as an ERC may not be assigned, delegated or transferred to any other entity.

(2) An ERC shall be led by a managing director who is a professional employee of the sponsoring IHE ~~[institution of higher education (IHE)]~~. The managing director shall report directly to the chief operating officer of the sponsoring IHE unless a different reporting structure is approved by the TEA and the THECB [CB].

(3) All research at an ERC involving access to confidential information shall be conducted only with the approval of and under the joint oversight of TEA and the THECB [CB] through the Joint Advisory Board. Research that does not involve access to confidential information may be conducted by the ERCs without approval of the Joint Advisory Board upon 30 days notice to the TEA and the THECB [CB] and certification by the ERC that sufficient resources will be available to meet all demands for resources to conduct research or manipulate data under the direction of the Joint Advisory Board or on behalf of the TEA or the THECB [CB].

(4) Confidential information provided to an ERC by the TEA or the THECB [CB] shall be protected by procedures to ensure that any unique identifying number is not traceable to any individual. Such procedures must be maintained as confidential by the TEA and the THECB [CB] and may not be shared with an ERC, or used for any other purpose. Under no circumstances may social security numbers, names, or birthdates be accessed for the purpose of research at an ERC.

(5) (No change.)

(6) All research produced at an ERC shall:

(A) be made available upon request to the TEA and the THECB [CB];

(B) have TEA and THECB be notified one week prior to release and have all derivatives coming out of the study be available to the TEA and THECB one week prior to release;

(C) include disclosure of access fees assessed or waived to the TEA and THECB;

(D) ~~[(B)]~~ be available for public distribution, copying or reproduction at no cost to the TEA or the THECB [CB];

(E) ~~[(C)]~~ contain a disclaimer in a form acceptable to the TEA and the THECB [CB] stating that the conclusions of the research do not necessarily reflect the opinion or official position of those entities or of the State of Texas; and

(F) ~~[(D)]~~ be reviewed before publication or other distribution by individuals other than those conducting the research to ensure that confidential information is not disclosed, in accordance with guidelines adopted under FERPA or by the TEA or the THECB. TEA and THECB are authorized to replicate or publish presentations coming out of a study prior to submission to academic journals for peer review and publication or prior to any other means of publication or public presentation of the research study. [CB];

(7) An ERC shall comply with the requirements of the Texas Public Information Act, including requirements relating to data manipulation. An ERC shall process any Public Information Act requests referred by the TEA or the THECB [CB] in a timely manner. Charges for processing Public Information Act requests shall be based on guidelines developed by the Texas Attorney General's Office and approved by the Joint Advisory Board.

(8) A sponsoring IHE shall cooperate fully with all audit requests made by the TEA or the THECB [CB]. Each ERC shall annually request and undergo an internal security audit performed by their Internal Auditor's office, as well as by the Texas Department of Information Resources, or a contractor approved by that Department, which shall include a penetration test of computer equipment and access.

(9) There shall be no supplemental P-12 data added to the ERC database unless approved by both the commissioner of higher education and the commissioner of education. [Research projects that require access to data not then included in the database maintained by the CB for research will be provided by the CB or the TEA if available. An ERC will be charged the cost to process or manipulate such data. ERCs will be assessed for annual maintenance costs of the CB and the TEA as approved by the Joint Advisory Board.]

(e) Sanctions and Termination.

(1) Upon a determination that confidential information has been released or has been copied to another location, or that appropriate security measures are not in place to protect confidential information, the commissioners of education and higher education [the Joint Advisory Board] may require an ERC to obtain appropriate services or equipment or to remove confidential information from such other location in order to remedy a security deficit. Such services or equipment shall be purchased by the ERC from vendors subject to approval of the commissioners of education and higher education [Joint Advisory Board].

(2) An ERC may be terminated by joint action of the TEA and the THECB [CB] for failure to meet the requirements of state or federal law, of this section ~~[subchapter]~~, or of the terms of a contract establishing the ERC. An ERC shall be entitled to an informal review of a determination to terminate its status by a designee of the commissioner of education and the commissioner of higher education prior to the effective date of the termination.

(3) (No change.)

(4) A termination made pursuant to this section shall become final and binding unless, within 30 days of its receipt of the notice of termination, the ERC invokes the administrative remedies contained in Chapter 1, Subchapter [subchapter] B of this title [the Rules of the CB] (relating to Hearings and Appeals).

(5) Any ultimate recommendation regarding termination shall be made to both the THECB [CB] and the commissioner of education. The THECB [CB] and the commissioner of education must concur for any termination of an ERC invoking such administrative remedies to become final.

(f) Security.

(1) (No change.)

(2) All physical locations at which confidential information may be accessed at an ERC must be located within Texas, at a sponsoring ERC [HHE], and approved by both the TEA and the THECB. [CB: Each ERC may provide for off-site data back up of information for disaster recovery purposes in accordance with DIR processes. No research can be performed at a back up site.]

(3) Either the TEA or the THECB [CB] may suspend access to confidential information provided to an ERC based on a significant risk of unauthorized disclosure of confidential information.

(4) Sponsoring ERCs shall immediately notify TEA and THECB of all potential or actual data security breaches that occur at any of their locations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 24, 2013.

TRD-201301643

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



## CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 19 TAC §5.9

The Texas Higher Education Coordinating Board proposes new §5.9, concerning higher education accountability measures requiring institutional input. Specifically, this new section responds to the requirement in Senate Bill 5, 82nd Legislature, Regular Session, which requires that the Coordinating Board adopt into rule, by September 1, 2013, any required reports requested from a higher education institution that are not already authorized in rule or statute. The Texas Higher Education Accountability System, which was created by Executive Order RP 31 in January 2004, includes a small number of measures that are input directly by institutions. As institutional input measures are not currently referenced in rule or statute, a rule is needed to ensure that these measures can continue to be requested and new measures may be added, if agreed upon by the affected institutions in the accountability peer groups. Examples of institutional input measures currently collected include faculty awards, endowment data, number of patents earned, students in GED programs

and contract training, and number of outpatient visits. This rule only applies to general academic institutions that are agencies of the state and public health-related institutions. Community colleges participate in the Higher Education Accountability System voluntarily.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the new section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Brown has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be availability of information that has been determined to be important for understanding and improving Texas higher education. There is no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Gary Johnstone, Deputy Assistant Commissioner for Planning and Accountability, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752 or gary.johnstone@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Education Code, §61.051(h) and §62.145; and Executive Order RP 31 issued on January 22, 2004, by Governor Rick Perry.

The new section affects implementation of the requirements of Texas Education Code, §62.145, and Executive Order RP 31.

§5.9. Institutional Input Measures in the Texas Higher Education Accountability System.

(a) General academic institutions that are agencies of the state and public health-related institutions must provide to the Coordinating Board, on a yearly basis, information for all of the applicable institutional input measures identified as of January 1, 2013, in the Texas Higher Education Accountability System unless otherwise directed by the Coordinating Board.

(b) General academic institutions that are agencies of the state and public health-related institutions must provide to the Coordinating Board, on a yearly basis, any institutional input measures for the Texas Higher Education Accountability System not covered by subsection (a) of this section on the condition that the specific nature of the additional information is agreed upon through the consensus of the members of the applicable Accountability peer group.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



# CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS SUBCHAPTER A. GENERAL PROVISIONS

## 19 TAC §§7.3, 7.7, 7.13

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§7.3, 7.7, and 7.13, concerning Degree Granting Colleges and Universities Other Than Texas Public Institutions.

The amendments to §7.3 clarify that institutions under a Certificate of Authorization are exempt from certain identified regulations, but not all regulation.

The amendments to §7.7 provide for an annual review of institutions under a Certificate of Authorization. The amendments require additional information to be provided in the initial application for a Certificate of Authorization, annual updates, and continued acknowledgement and attestation to compliance with applicable rules. Institutions are divided alphabetically into two groups. Recommendations for continuation of institution's Certificates of Authorization will be brought to either the January or July board meetings. Language is added to clarify Certificates of Authorization expire at the end of the institution's grant of accreditation by their Board-recognized accreditor or, in the case of a Certificate of Authorization based solely on offering clinicals or internships within Texas, at the end of one year. The right to revoke a Certificate of Authorization remains, including based on staff recommendation after assessment of annual review materials. A 90-day timeline is added for institutions under a Provisional Certificate of Authorization to either apply for a Certificate of Authorization or Certificate of Authority.

The amendment to §7.13 clarifies that the section covers student data reporting, differentiating it from the annual review documentation requested in §7.7.

Dr. Stacey Silverman, Interim Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for each year of the first five years the amendments are in effect there would be fiscal implication for the state if there is a need to hire additional personnel to administer the annual review process. There is no fiscal implication for local governments as a result of amending the sections.

Dr. Silverman has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to ensure continued compliance of institutions under a Certificate of Authorization and to address concerns for oversight of institutions authorized under a Certificate of Authorization based on accreditation by a Board-recognized accreditor. There is no effect on small businesses. There are no anticipated economic cost differences to persons who are required to comply with the sections as proposed as the Coordinating Board is not authorized to charge fees for a Certificate of Authorization. There is no impact on local employment.

Comments on the proposal may be submitted by mail to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [WAARcomments@thecb.state.tx.us](mailto:WAARcomments@thecb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapters G and H, which provides the Coordinating Board with the authority to administer the laws regulating private and out-of-state public postsecondary institutions operating in Texas.

The amendments affect the Texas Education Code, Chapter 61, Subchapters G and H.

### §7.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (12) (No change.)

(13) Certificate of Authorization--The Board's acknowledgment that an institution is qualified for an exemption from certain identified [the] regulations in this subchapter.

(14) - (23) (No change.)

(24) Exempt Institution--An institution that is accredited by an agency recognized by the Board under §7.6 of this chapter (relating to Recognition of Accrediting Agencies), is defined as a "private or independent institution of higher education" under Texas Education Code, §61.003(15), or a career school or college that applies for and is declared exempt under this chapter, by the Texas Workforce Commission as described in Texas Education Code, §61.303(a), or Texas Education Code Chapter 132, respectively. Exempt institutions must ~~[may still have to]~~ comply with certain Board rules.

(25) - (44) (No change.)

### §7.7. Institutions Accredited by Board-Recognized Accreditors.

An institution which does not meet the definition of institution of higher education contained in Texas Education Code §61.003, is accredited by a Board-recognized accreditor, and is interested in offering degrees or courses leading to degrees in the State of Texas must follow the requirements in paragraphs (1) - (5) of this section.

(1) Authorization to Offer Degrees or Courses Leading to Degrees in Texas.

(A) Each institution and/or campus location must submit an application for a Certificate of Authorization to offer degree(s) or courses leading to degrees in Texas. The application form for the Certificate of Authorization may be found on the Board's website. The application must contain the following information:

(i) Name of the institution;

(ii) Physical location of campus, or in the case of only providing clinicals or internships in Texas, the physical location of all clinical or internship sites, number of students in clinicals or internships and start and end date of clinicals or internships;

(iii) Name and contact information of the Chief Administrative Officer of the campus and name and contact information of the designated Single Point of Contact as defined in §7.3 of this chapter (relating to Definitions). In the case of an application based on clinicals or internships, name and contact information of clinical or internship site supervisors;

(iv) Name of Board-recognized accreditor;

(v) Level of degree, degree program name, and CIP code as [and degrees] authorized by the Board-recognized accreditor ~~[CIP code]~~;

(vi) Disclosure and proof of notification to students and potential students of any program which does not make the grad-

uate eligible to take required professional examinations in that field or to practice regulated professions in that filed in Texas;

(vii) Dates of accreditation granted by the Board-recognized accreditor;

(viii) [(vi)] Acknowledgement of student complaint procedure, compliance with standards for operation of institutions, annual review requirements, substantive change notification, and student data reporting requirements contained in this section, §§1.110 - 1.120 of this title (relating to Student Complaint Procedure), §7.4 of this chapter (relating to Standards for Operation of Institutions), §7.11 of this chapter (relating to Changes of Ownership and Other Substantive Changes) and §7.13 of this chapter (relating to Student Data Reporting), respectively;

(ix) [(vii)] Texas Workforce Commission Certificate of Approval or a Texas Workforce Commission exemption from Texas Education Code, Chapter 132.

(B) Board staff will verify information and accreditation status and upon confirmation, will provide a Certificate of Authorization to offer in Texas those degrees or courses leading to degrees for which it is accredited, or in the case of only providing clinicals or internships in Texas, a Certificate of Authorization for an institution to offer in Texas identified clinicals or internships in connection with those degrees or courses leading to degrees for which the institution is accredited. The Certificate of Authorization will be issued to the institution by name, city and state.

(C) Certificates of Authorization are subject to annual review for continued compliance with the Board-recognized accreditor's standards of operation, student complaint processes, financial viability, and fair consumer protection practices.

(i) Institutions must submit the following documentation on an annual basis for Board staff review and recommendation to the Board for continuation or revocation of the Certificate of Authorization:

(I) Annual audited financial statements, issued less than one year from time of submission, prepared in accordance with Generally Accepted Accounting Principles by an independent certified public accountant;

(II) Documentation of fair consumer practices, including any advertising used in Texas and disclosure to students and potential students of any program which does not make the graduate eligible to take required professional examinations in that field or to practice regulated professions in that filed in Texas;

(III) An annotated copy of the student catalog or student handbook showing compliance with §7.4 of this chapter;

(IV) A copy of the institution's student complaint policy, links to online student complaint procedures and forms, and summary of all student complaints concerning the institution which have been filed, investigated, pending or resolved since the date of issuance of the Certificate of Authorization or date of last annual review submission;

(V) All documentation concerning the institution received from the Board-recognized accreditor since the date of issuance of the Certificate of Authorization or date of last annual review submission, including, but not limited to, changes in accreditation, changes in degree levels or program approvals, changes in ownership or management, changes in physical facilities, and initiation or resolution of student complaints against the institution;

(VI) Attestation that all documentation submitted is true and correct and continued acknowledgement of student complaint procedure, annual review requirements, substantive change notification, and student data reporting requirements contained in this section, §§1.110 - 1.120 of this title, §§7.4, 7.11, and 7.13 of this chapter, respectively.

(ii) Annual reviews are conducted based on an institution's name and initial date of authorization.

(I) Institutions with names starting with "A" through "O" must submit annual review documentation by January 15 of each year. The Board will review staff recommendations at the July board meeting.

(II) Institutions with names starting with "P" through "Z" must submit annual review documentation by July 15 of each year. The Board will review staff recommendations at the January board meeting.

(III) Institutions that have received their first Certificate of Authorization less than six months from the due date for submission of annual review documentation may wait to submit documentation until the following annual review submission date.

(iii) Prior to making a recommendation to the Board, staff has discretion to conduct a site visit at the institution if warranted by facts disclosed in the annual review documentation. The Board-recognized accreditor will be notified and invited to participate.

(D) Certificates of Authorization, upon Board staff recommendation after annual review, expire at the end of the grant of accreditation by the Board-recognized accreditor.

(i) If a new grant of accreditation is awarded by the Board-recognized accreditor, the Certificate of Authorization may be renewed upon submission of documentation of the new grant of accreditation.

(ii) If an institution changes recognized accreditors, the institution must submit a new application for a Certificate of Authorization.

(E) [(C)] Certificates of Authorizations based solely on providing clinicals or internships in Texas expire one year from date of issuance [on the end date of the last Texas clinical or internship].

(i) If clinicals or internships are ongoing in Texas, the Certificate of Authorization based solely on providing clinicals or internships in Texas must be renewed on an annual basis. At least thirty (30) days, but no more than ninety (90) days, prior to the expiration of the current Certification of Authorization, an institution, if it desires renewal, is required to provide updated information regarding the physical location of all clinical or internship sites, number of students in clinicals or internships, and the start and end date of the clinicals or internships.

(ii) The Board shall renew the Certificate of Authorization based solely on providing clinicals or internships in Texas if it finds that the institution has maintained all requisite standards.

(2) An institution that has requested a Certificate of Authorization but has not received authorization from its accrediting agency to be included in its main campus' accreditation either on an interim or final basis may be granted a Provisional Certificate of Authorization. The Provisional Certificate of Authorization is an acknowledgment that the institution has qualified for a temporary exemption from Board rules based on the main campus' accreditation and is authorized to offer degrees and courses that lead to a degree. The Provisional Certificate of Authorization will be authorized until such time as the insti-

tution is granted accreditation or for a period of 15 months, whichever occurs first. The conditions will be outlined in the Provisional Certificate of Authorization letter that will accompany the Provisional Certificate of Authorization. If accreditation has not been achieved by the expiration date, the Provisional Certificate of Authorization will be withdrawn, the institution's authorization to offer degrees will be terminated, and the institution will be required to comply with the provisions of §7.8 of this chapter (relating to Institutions Not Accredited by a Board-Recognized Accreditor). Subsequent Provisional Certificates of Authorization will not be issued. At least ninety days prior to expiration of the certificate, institutions operating under a Provisional Certificate of Authorization must submit either an application for a Certificate of Authorization under this section or an application for a Certificate of Authority under §7.8 of this chapter.

(3) Grounds for Revocation of any Certificate of Authorization.

(A) The Institution no longer holds a Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission.

(B) Institution loses accreditation from Board-recognized accreditor.

(C) Institution's Accreditor is removed from the U.S. Department of Education or the Board's list of approved accreditors.

(D) Institution fails to comply with data reporting or substantive change notification requirements.

(E) Board staff recommends revocation based on assessment of annual review documentation.

(F) ~~[(E)]~~ Institution offers degrees for which it does not have accreditor approval.

(4) - (5) (No change.)

#### §7.13. *Student Data Reporting.*

The institutions shall provide to the Board annually, in a form established by the Board, student records of the type specified in §7.4(19) of this chapter (relating to Standards for Operation of Institutions).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 29, 2013.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



## CHAPTER 13. FINANCIAL PLANNING

### SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

#### 19 TAC §13.102, §13.107

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §13.102 and §13.107,

pertaining to limitations on formula funding for remedial and developmental courses. Specifically, the proposed amendment to §13.107 identifies the limitations on when universities may report, for formula funding, the semester credit hours of students enrolled in approved developmental student success or developmental ESL interventions under Rider 52, General Appropriations Act, 82nd Texas Legislature, Regular Session. Specifically, universities may not report, for funding, students who have already met their institutions' readiness standards for college-level work in developmental student success or developmental ESL interventions. Additionally, universities may not report students who are currently enrolled as international study abroad students as defined in §13.102. A definition of international study abroad students will be added to the definitions in §13.102.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the amended sections are in effect, there will be a fiscal impact to the state, though it is difficult to estimate. Each fall, approximately 10,000 students enroll at universities as first-time college students who have not met state TSI standards in one or more areas (approximately 14 percent of fall, first-time college students at universities). If all of these students (50,000 for five years) enrolled in a .5 SCH developmental student success or developmental ESL intervention at a cost of \$3.71 per SCH, the cost to the state would be \$92,750. This is an estimate since it is difficult to know how many students would actually enroll. Some eligible students will not enroll in student success or ESL interventions; others may enroll in several. It should be noted that students who receive appropriate developmental interventions may succeed in college-level courses at higher rates, resulting in a potential savings to the state.

Ms. Brown has determined that for each year of the first five years the amended sections are in effect, the public will benefit from having limitations on state funding that apply developmental student success or developmental ESL interventions. Defining international study abroad students will ensure consistency in reporting across institutions and ensure the appropriate use of state funds. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Gary W. Johnstone, Deputy Assistant Commissioner for Planning and Accountability, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752, [gary.johnstone@thehb.state.tx.us](mailto:gary.johnstone@thehb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.0595, which provides the Coordinating Board with authority to adopt rules relating to funding of excess undergraduate credit hours.

The proposed amendments affect Texas Education Code, §61.0595.

#### §13.102. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) International Study Abroad Student--A student who is a citizen or permanent resident of a nation other than the United States who resides in the nation of which he or she is a citizen or permanent resident and who is in the United States and enrolled at a Texas public institution of higher education for a limited time as part of an exchange program or other study abroad program and who is not seeking a certificate or degree from a Texas public institution of higher education.

(5) [(4)] Non-Course-Based Developmental Education Interventions (also known as Non-Semester-Length Interventions and also referred to as interventions)--Interventions that use learning approaches designed to address a student's identified weaknesses and effectively and efficiently prepare the student for college-level work. These interventions must be overseen by an instructor of record, must not fit traditional course frameworks, and cannot include advising or learning support activities already connected to a traditional course; interventions may include, but are not limited to, tutoring, supplemental instruction, or labs.

(6) [(5)] Remedial and Developmental Courses--Courses designed to correct academic deficiencies and bring students' skills to an appropriate level for entry into college. The term includes English as a Second Language (ESL) courses in which a student is placed as a result of failing the reading or writing portion of a test required by §4.56 of this title (relating to Assessment Instruments).

(7) [(6)] Repeated Hours for Attempted Course--Hours for a course that is the same or substantially similar to a course that the student previously attempted for two or more times at the same institution. Previously attempted courses from which the student withdraws before the official census date shall not count as an attempted course.

(8) [(7)] Repeated Hours for Completed Course--Hours for a course in which a student enrolls for two or more times that is the same as or substantially similar to a course that the student previously completed and received a grade of A, B, C, D, F, or Pass/Fail at the same institution.

(9) [(8)] Student--For the purposes of this subchapter, a student who has not been awarded a bachelor's degree or the equivalent.

(10) [(9)] Workforce Education Courses--Courses offered by two-year institutions for the primary purpose of preparing students to enter the workforce rather than academic transfer. The term includes both technical courses and continuing education courses.

*§13.107. Limitation on Formula Funding for Remedial and Developmental Courses and Interventions.*

(a) - (b) (No change.)

(c) General academic teaching institutions may not report students in developmental student success courses or developmental ESL courses as defined in §13.102(6) of this title (relating to Definitions) for formula funding. General academic teaching institutions may report a student enrolled in a developmental student success intervention or developmental ESL intervention as defined in §13.102(5) of this title for formula funding only if the following conditions are met:

(1) the student has not met state college readiness standards under Texas Education Code §51.3062;

(2) the student is not currently an international study abroad student as defined in §13.102 of this title;

(3) the student has not exceeded 18 semester credit hours of remedial and developmental courses and/or interventions related to subsection (a) of this section; and

(4) the intervention meets the course description for a developmental student success or developmental ESOL (English for

Speakers of Other Languages) intervention in the Lower Division Academic Course Guide Manual (ACGM).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 24, 2013.

TRD-201301641

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



## CHAPTER 17. RESOURCE PLANNING

### SUBCHAPTER K. REPORTS

#### 19 TAC §17.101

The Texas Higher Education Coordinating Board proposes amendments to §17.101, concerning institutional reports. Specifically, these amendments will make necessary changes to enable the continued collection of the annual housing report, which is necessary to evaluate the statewide demand on student housing, inform the legislature and other interested parties, and assess capital project requests.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the amended section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Brown has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be more effective administration of the capital project approval process and continued transparency in the realm of higher education. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Gary Johnstone, Deputy Assistant Commissioner for Planning and Accountability, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752, gary.johnstone@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §§61.0572, 61.058, and 61.0582.

The amendments affect Texas Education Code, §§61.0572, 61.058, and 61.0582.

*§17.101. Institutional Reports.*

Institutions of higher education shall submit current data to the Board for the following reports.

(1) - (4) (No change.)

(5) Housing Report. Annually, on or before February 1, institutions shall report the availability and occupancy of student housing at their institution. This report shall include, but is not limited to:

(A) total number of beds available and occupied;

(B) number or private development beds available and occupied;

(C) number of institutionally owned bed available and occupied;

(D) number of beds currently under construction, both private and institutionally owned;

(E) number of beds planned for construction in the following fiscal year, both private and institutionally owned; and

(F) number of beds planned to be withdrawn from use in the current year, both private and institutionally owned.

(6) [(5)] Other Reports. Institutions are required to submit such other reports required by the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 24, 2013.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



## **TITLE 22. EXAMINING BOARDS**

### **PART 9. TEXAS MEDICAL BOARD**

#### **CHAPTER 187. PROCEDURAL RULES**

##### **SUBCHAPTER B. INFORMAL BOARD**

##### **PROCEEDINGS**

###### **22 TAC §187.18**

The Texas Medical Board (Board) proposes amendments to §187.18, concerning Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance.

The amendment deletes language that requires a licensee to pay for a recording of an informal settlement conference (ISC) at least 15 days prior to the date of the ISC, as the requirement is inconsistent with the payment process required by the Board's recording and transcription vendor. Additionally, the amendment adds language requiring the request be in writing and received by the Board no later than 15 days prior to the date of the ISC.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are consistent with statute, accurately reflect the Board's current processes, and set reasonable deadlines for submission of requests to the Board to have ISCs recorded.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro-businesses.

Comments on the proposal may be submitted to Sarah Tuthill, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §164.003(i) of the Texas Occupations Code.

No other statutes, articles or codes are affected by this proposal.

*§187.18. Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance.*

(a) - (k) (No change.)

(l) On request by a licensee, the board shall make a recording of the ISC. The request must be submitted in writing, and received by the Board at least 15 days prior to the date of the ISC. Deliberations of the ISC panel shall be excluded from any such recording. The media format of the recording shall be determined by the board. The recording is part of the investigative file and may not be released to a third party unless authorized under the Act. The board may charge the licensee a fee to cover the cost of recording the proceeding. [The licensee must provide payment 15 days prior to the date of the ISC and must submit payment with any written response to the ISC packets.] Licensees and their representatives may not independently record an ISC.

(m) - (o) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 26, 2013.

TRD-201301667

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 9, 2013

For further information, please call: (512) 305-7016



## **CHAPTER 197. EMERGENCY MEDICAL SERVICE**

### **22 TAC §197.5**

The Texas Medical Board (Board) proposes amendments to §197.5, concerning Authority for Control of Medical Services at the Scene of a Medical Emergency.

The amendment makes corrections to typographical errors in the heading and text of the rule.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules consistent with statutes.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as

proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro-businesses.

Comments on the proposal may be submitted to Sarah Tuthill, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by Chapter 773, Health and Safety Code.

No other statutes, articles or codes are affected by this proposal.

*§197.5. Authority for Control of Medical Services at the Scene [scene] of a Medical Emergency.*

(a) Control at the scene of a medical [medial] emergency shall be the responsibility of the individual in attendance who is most appropriately trained and knowledgeable in providing prehospital emergency stabilization and transport.

(b) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 26, 2013.

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## **TITLE 30. ENVIRONMENTAL QUALITY**

### **PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

#### **CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS**

##### **SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS**

##### **DIVISION 4. CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II) AT MOTOR VEHICLE FUEL DISPENSING FACILITIES**

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) proposes amendments to §§115.240, 115.242 - 115.246; new §115.241; and repeal of §§115.241, 115.247 and 115.249.

If adopted, the commission will submit the amendments, new section, and repeals to the United States Environmental Protection Agency (EPA) as a proposed revision to the State Implementation Plan (SIP).

#### **Background and Summary of the Factual Basis for the Proposed Rules**

Under the Federal Clean Air Act (FCAA) amendments of 1990, states were required to submit a revision to the SIP no later than November 15, 1992, that included a Stage II Vapor Recovery Program to control gasoline vapors from the refueling of motor vehicles. A Stage II vapor recovery SIP was first approved for Texas on October 16, 1992, and later revised on November 10, 1993. The Stage II Vapor Recovery Program involves the use of technology that prevents gasoline vapors from escaping during refueling. Gasoline vapors are volatile organic compounds (VOC) that react with nitrogen oxides in the presence of sunlight to form ozone. As part of the control strategy for ozone attainment, the EPA mandated that Stage II refueling requirements apply to all public and private gasoline dispensing facilities (GDFs) that dispense 10,000 gallons or more of gasoline per month. The TCEQ applied a more stringent throughput standard in the 16 ozone nonattainment counties by requiring all GDFs constructed after November 15, 1992, to install Stage II vapor recovery regardless of throughput. The original Stage II vapor recovery rules relied upon the California Air Resources Board (CARB) certification procedures for vapor recovery equipment. The Stage II SIP was revised in 2002 to require more frequent testing and more on-site evaluation of testing performed on vapor recovery systems at GDFs as well as a phase-in schedule to retrofit or install onboard-refueling vapor-recovery (ORVR) compatible Stage II vapor recovery systems. Stage II vapor system efficiency was compromised by ORVR equipped vehicles unless the system had ORVR compatible hardware. The Stage II SIP was then revised on March 23, 2005, to offer an expanded definition for "ORVR compatible" that allowed for the use of other technologies for controlling gasoline vapors. On June 27, 2007, the Stage II SIP was also revised to add language to exempt facilities from installing Stage II equipment if the facility could demonstrate that refueling at that facility involved a fleet of 95% or more ORVR-equipped vehicles. This SIP is still under consideration by the EPA and has not been approved. The EPA expressed concerns that the language justifying the exemption needed to be more descriptive and explanatory. If this proposed rulemaking is adopted by the commission and the subsequent submitted SIP revision is approved by EPA, the commission will request the withdrawal of the June 27, 2007, pending SIP submittal since revisions to that SIP will no longer be necessary.

FCAA, §202(a)(6) also provides that the EPA may revise or waive the application of Stage II requirements if the EPA determines that ORVR is in widespread use through the motor vehicle fleet. Recently, the EPA finalized a rulemaking (published in the May 16, 2012, *Federal Register*, 77 FR 28772) for 40 Code of Federal Regulations (CFR) Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. Vehicle ORVR systems are passive systems that force gasoline vapors displaced from a vehicle's fuel tank during refueling to be directed into a carbon canister holding system within the vehicle and ultimately to the engine where the vapors are consumed. The EPA required ORVR systems to be phased in beginning with 1998 model-year light-duty gasoline vehicles and since 2006, all new light- and medium-duty gasoline vehicles are equipped with ORVR. An



initial analysis using the EPA Motor Vehicle Emissions Simulator 2010a model shows that the benefits from ORVR alone will be greater than the benefits from Stage II alone by the year 2010 in the Houston-Galveston-Brazoria (HGB) area, 2012 in the Dallas-Fort Worth (DFW) area, 2013 in the Beaumont-Port Arthur (BPA) area, and 2014 in the El Paso area. Vehicle ORVR systems are monitored through a vehicle's on-board diagnostic system making the system much more cost-effective than the required monitoring and testing of Stage II systems.

The determination that ORVR technology is in widespread use allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone National Ambient Air Quality Standard (NAAQS). States that have implemented a Stage II program may revise their Stage II SIP demonstrating that the air quality will be maintained after removing the Stage II equipment. The proposed rule revision would revise Chapter 115, Subchapter C, Division 4 to specify that owners of new GDFs are not required to install Stage II equipment and to require owners of existing GDFs in the current program areas to properly decommission Stage II equipment. According to the EPA's guidance document, *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*, issued on August 7, 2012, the commission will need to demonstrate under FCAA, §110(l) that the air quality will not be affected by the decommissioning of, or failure to install, Stage II equipment. This demonstration will be incorporated into the corresponding SIP revision and is discussed further in the *Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)* portion of this preamble.

#### *Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)*

The Stage II program is a FCAA-specified VOC control strategy for certain ozone nonattainment areas. Under FCAA, §110(l), the EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA. The EPA has to approve a SIP revision that removes or modifies Stage II gasoline refueling vapor control measure(s) if the EPA concludes that a state's submittal provides that the removal of Stage II controls would not interfere with attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the FCAA. The executive director has performed an assessment of the exact amount of benefit loss from removing Stage II and any effect on air quality programs in the four Texas Stage II areas using the method documented in the EPA's *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*, August 7, 2012. An analysis for years 2012 through 2030 found that for all years the losses represent less than one-half of one percent of the total VOC inventory. The benefit losses for removing Stage II are small in 2012 and decrease rapidly as the percentage of vehicles equipped with ORVR increase over time. The assessment found that small changes to the VOC inventories due to the removal of Stage II do not significantly change any of the results of the Texas air quality plans. The detailed analysis to demonstrate that removal of Stage II requirements does not interfere with attainment or maintenance of the NAAQS will be included in the Stage II SIP revision (Project Number 2013-002-SIP-NR) that corresponds with this rule revision.

#### Section by Section Discussion

##### *§115.240, Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment*

The commission proposes to amend §115.240 by adding the definitions for "decommission" and "gasoline dispensing facility." The term "decommission" would be defined as the permanent removal of Stage II vapor recovery controls at a GDF. The term "gasoline dispensing facility" would be defined as a location that dispenses gasoline to motor vehicles and includes retail outlets and private and commercial outlets. The definitions in this section would be re-numbered as needed.

##### *§115.241, Emission Specifications*

The commission proposes the repeal of existing §115.241. The emission specifications in §115.241 would no longer be necessary because Stage II equipment would not be required to be installed at any GDF after the adoption of this proposed rulemaking. This section requires that the transfer of gasoline from a stationary storage container to a motor vehicle fuel tank be allowed only if an approved Stage II vapor recovery system has been installed at the GDF. Owners of GDFs must maintain their Stage II equipment according to §115.242, until they complete decommissioning which ensures that the emissions specifications of this section continue to be met.

##### *§115.241, Decommissioning of Stage II Vapor Recovery Equipment*

The commission proposes new §115.241 to provide for the time line and process for decommissioning of Stage II vapor recovery controls at GDFs. The new section would establish that the decommissioning process may begin 30-calendar days after the EPA approval of the repeal of the Stage II vapor recovery requirement and of the decommissioning requirement and the EPA approval of the revised corresponding SIP revision. The 30-calendar day time frame would allow TCEQ regional office staff, licensed contractors, and owners and operators of GDFs to coordinate decommissioning activities in an affected area. The commission is proposing this delayed implementation for decommissioning because the EPA has stipulated that Stage II controls cannot be removed until the EPA has approved a State's Stage II decommissioning rule and SIP revisions.

The new language would include notification requirements and procedural activities that must occur during the decommissioning process. Owners and operators of GDFs electing to decommission their Stage II vapor recovery would be required to notify the appropriate TCEQ regional office and local government with jurisdiction where the GDF is located 30-calendar days prior to the beginning of the activity. The notification would provide information on the GDF, the owner or operator of the GDF, the contractor who will perform the decommissioning, and the type of system installed at the GDF. The proposed requirements include the proper procedures from disconnecting and capping parts of the system and a list of test procedures to ensure the prevention of leaking of vapors and fluids. The TCEQ plans to develop a checklist, Stage II Decommissioning Checklist and Submittal Form, that will include all applicable decommissioning requirements included in this proposed rulemaking that must be performed and completed. The proposed requirements were developed using the Decommissioning Stage II Vapor Recovery Piping section in the Petroleum Equipment Institute's (PEI) publication, *Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle-Fueling Sites*, PEI/RP300-09, as a reference. PEI's practices are generally accepted and re-

garded by industry stakeholders as the appropriate methods for successfully decommissioning the equipment.

The section would also provide new requirements for closing out all Stage II activities, including decommissioning by the affected GDF. These requirements would include notification of completed decommissioning and maintaining the notification forms that include the names of licensed contractors used in the decommissioning of Stage II equipment at the GDF.

#### *§115.242, Control Requirements*

The commission proposes the revision to §115.242 by providing that owners of newly constructed GDFs after May 16, 2012, and owners and operators of GDFs, that as of May 16, 2012, were exempt from installing Stage II vapor recovery due to an exemption from the requirements because of low monthly gasoline throughput, would no longer have to install Stage II vapor recovery equipment. Owners and operators of GDFs would have the option of decommissioning Stage II equipment under the requirements proposed in §115.241 of this chapter, or continuing to operate with the current Stage II equipment until the mandatory removal date of August 31, 2018. The proposed mandatory removal date was established after stakeholders expressed that the commission provide five to six years prior to decommissioning to allow for Stage II equipment installed at the time of the EPA's rule being finalized to be used through its expected life use. The mandatory date has also been established since finding compliant replacement equipment will be more difficult and the number of licensed testers will be reduced which will make it difficult for owners and operators of GDFs with Stage II equipment to comply with existing requirements. The TCEQ is requesting comment on the mandatory decommissioning date of August 31, 2018.

The proposed language also states that if an owner or operator elects to retain the Stage II vapor controls, the GDF would continue to meet the requirements of this division, until the Stage II vapor controls are properly removed from the GDF. To address the voluntary installation of Stage II equipment at GDFs not located in the affected counties, new language would be incorporated that would require all owners of GDFs, regardless of location in the state to remove all Stage II equipment by August 31, 2018. The proposed language would replace existing language that is being proposed for repeal that requires all GDFs in the counties listed in §115.249 to comply with this division. This rule revision proposes that no GDF in any county would have Stage II equipment installed or operational after August 31, 2018. Voluntary Stage II installations at GDFs outside of the affected counties have not been included in any modeling for past SIP activities and have no impact on the proposed SIP revision affected by this rulemaking.

The proposed revisions to §115.242 would also delete paragraphs (10) - (12) because GDFs would no longer need to meet these requirements. Paragraph (10) corresponds to exemptions in §115.247 which is also proposed for repeal. Paragraph (11) relates to the installation of approved systems in the case that CARB certification of a previously installed system was revoked. Finally, paragraph (12) requires facilities to notify the regional office with jurisdiction of any Stage II vapor recovery system installation.

#### *§115.243, Alternate Control Requirements*

The proposed revision to §115.243 would update references to §115.242, which would be revised to authorize the decommissioning of Stage II vapor controls.

#### *§115.244, Inspection Requirements*

The proposed revision to §115.244 would update references to §115.242, which would be revised to authorize the decommissioning of Stage II vapor controls.

#### *§115.245, Testing Requirements*

The commission proposes to amend §115.245 to require owners of GDFs that elect to install, repair, replace, or retain the Stage II equipment after the date that decommissioning is authorized, but before the mandatory removal date, would still be required to comply with this section, because the Stage II equipment would continue to be maintained and tested to ensure it is working properly and capturing gasoline vapors.

#### *§246.246, Recordkeeping Requirements*

The proposed revision to §115.246 would add the Stage II decommissioning notifications, records sufficient to demonstrate compliance with decommissioning requirements, and test results to recordkeeping items that would be maintained on site. Although other recordkeeping requirements in this subchapter are only required to be maintained for two years, the high level of decommissioning activity especially as August 31, 2018, draws near would require inspections and investigations beyond a two-year time frame.

#### *§115.247, Exemptions*

The commission is proposing to repeal §115.247, because exemptions from the Stage II requirements would no longer be applicable to this division. Since Stage II would no longer be required, the exemptions for GDFs that dispense gasoline to aircraft, watercraft, and agricultural equipment; GDFs that began construction before November 15, 1992, and dispense less than 10,000 gallons a month; and GDFs that refuel a motor fleet that is 95% ORVR equipped would no longer be needed. The proposed language in §115.242(a) makes clear that GDFs that did not have Stage II vapor controls installed as of May 16, 2012 are not subject to this division. Therefore, GDFs that qualified for these exemptions would not be subject to the rule by the proposed repeal of this exemption section.

#### *§115.249, Counties and Compliance Schedules*

The commission is proposing to repeal §115.249, because Stage II would no longer be required upon EPA approval of the proposed SIP revision at GDFs in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties. Additionally, GDFs in these counties have already met the compliance date of April 1, 2007, to become ORVR compatible.

#### *Fiscal Note: Costs to State and Local Government*

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency and for some units of state or local government that participate in the Stage II Vapor Recovery Program in nonattainment areas as a result of the administration or enforcement of the proposed rules. Cost savings may be significant for those businesses or local governments that do not have to install vapor recovery equipment at GDFs that they own or operate. In addition, beginning in 2018 and perhaps earlier, the University of Texas at Arlington and four other units of local government currently under contract with the agency to conduct Stage II Vapor Recovery Program inspections, monitoring, and enforcement activities may see reductions in funding if their con-

tracts are terminated or modified as a result of the implementation of the proposed rules. Local governments that own or operate GDFs will have some costs to decommission their Stage II vapor recovery equipment but are expected to experience cost savings in the long run. The agency is anticipated to experience cost savings in 2018 and perhaps earlier due to the proposed elimination of the requirement to inspect certain gasoline vapor recovery systems installed at GDFs in nonattainment areas.

The Stage II Vapor Recovery Program involves the use of technology that prevents gasoline vapors from escaping during refueling. Gasoline vapors are VOC emissions that can react with nitrogen oxides in the presence of sunlight to form ozone. The EPA recently finalized a rulemaking that determined that because vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions, Stage II vapor recovery systems are no longer necessary at GDFs in nonattainment areas. Because of these vehicle systems, the EPA will allow states to waive the requirement for Stage II vapor recovery systems to be installed at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. The EPA will also require states with a Stage II program to revise their Stage II SIP to demonstrate that the air quality will be maintained after the Stage II equipment is decommissioned.

GDFs that do not have to install the Stage II equipment will realize a cost savings. Staff estimates that costs for new Stage II vapor recovery equipment installation would range from \$40,000 for a four-dispenser GDF to \$120,000 for a 12-dispenser GDF with \$350 to \$1,000 in annual maintenance costs.

The proposed rules would require owners of GDFs with Stage II equipment already in place to decommission the equipment by August 31, 2018. However, the EPA has stipulated that decommissioning would not be able to begin until the EPA has approved the proposed rulemaking and SIP revision that authorizes the removal of the Stage II equipment. If the proposed rulemaking is adopted, EPA approval of the revised SIP may not take place until the beginning of 2015 at the earliest. Owners of GDFs would be allowed to keep their Stage II equipment until August 31, 2018, but would continue to maintain, test, and monitor the equipment. Owners of GDFs that decide to decommission their equipment would be required to submit a notice to the appropriate TCEQ regional office requesting approval for decommissioning. The TCEQ regional offices, or the local government with jurisdiction, would continue to inspect GDFs with Stage II equipment and would also inspect and monitor decommissioning activities at GDFs during the five-year period covered by this fiscal note.

At this time, certified Stage II vapor recovery systems are required at GDFs in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties in the HGB area; Collin, Dallas, Denton, and Tarrant Counties in the DFW area; El Paso County; and Hardin, Jefferson, and Orange Counties in the BPA area.

There are an estimated 420 Stage II facilities that are owned by units of local government (including counties, cities, school districts, etc.) that would have to comply with the decommissioning requirements. The costs for removing this equipment will vary and likely depend upon the number of gasoline dispensers located at each GDF. However, staff estimates that the one-time cost would be approximately \$600 per gasoline dispenser. The Stage II equipment is inspected by the agency annually with a more comprehensive inspection every three years. Staff estimates that it costs \$250 to \$350 each year for a GDF to test

the Stage II equipment and \$350 every three years for a more comprehensive Stage II equipment test. Staff also estimates an additional \$350 to \$1,000 each year in costs for maintenance and repair of the equipment. Removal of the equipment would result in a net cost savings for each GDF over the long term but may represent a cost increase to the facilities over the short term. Owners of GDFs including local governments may begin decommissioning their GDFs 30-calendar days after the EPA provides SIP approval, but they may choose to wait until the proposed 2018 deadline in order to maximize the initial and ongoing cost of installing and maintaining the equipment.

Four local governments currently perform Stage II enforcement, inspections, and monitoring activities in their local jurisdictions through a contract with the TCEQ. The four local governments are the cities of Dallas, Fort Worth, and El Paso and the Galveston County Health District. These particular contracts also include other air pollution investigation activities in addition to the Stage II investigations. The contracts require the local government to provide a 33% funding match. The TCEQ also contracts with the University of Texas at Arlington to perform Stage II investigations in the city of Houston. This contract is for approximately \$500,000 and does not require a funding match. If the proposed decommissioning begins, these contracts would need to be re-evaluated to account for the decrease and eventual elimination of the Stage II investigations and associated activities. Once the Stage II equipment is removed from GDFs, local governments and the TCEQ would see a cost savings associated with the costs to monitor and inspect these systems.

#### Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the continued protection of public health and safety while eliminating unnecessary requirements and maintaining compliance with federal rules.

The proposed rules are not expected to have fiscal implications for individuals and businesses during the first five years the proposed rules are implemented unless they are constructing new GDFs or unless they perform Stage II testing for GDFs. For those owners of GDFs that choose to decommission their Stage II equipment after EPA approval but before the 2018 deadline, there would be some costs depending upon the number of gasoline dispensers at each GDF. There are approximately 282 registered Stage II testers and 61 companies that perform testing services as part of their operations. Because most of them do other types of testing and provide other services, they are not expected to experience significant fiscal impacts as a result of the proposed rulemaking.

Currently, approved and certified Stage II vapor recovery systems are required at GDFs in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties in the HGB area; Collin, Dallas, Denton, and Tarrant Counties in the DFW area; El Paso County; and Hardin, Jefferson, and Orange Counties in the BPA area. There are approximately 6,600 GDFs in these counties that are required to have Stage II vapor recovery equipment installed. These owners of GDFs will have to pay to decommission the Stage II equipment if the proposed rules are adopted. These costs are estimated to be \$600 per dispenser. Total decommissioning costs for each GDF will depend upon the number of dispensers at each facility. Over time, owners of each GDF will experience cost savings because they will not have to pay testing, inspection, and maintenance and re-

pair costs. These cost savings for each GDF are not anticipated to be significant but would be at least \$250 to \$350 each year for inspection and testing and \$350 to \$1,000 in annual cost savings for maintenance and repair. There would be cost savings for those GDFs that do not have to install the Stage II equipment. Staff estimates that costs for new Stage II vapor recovery equipment installation would range from \$40,000 for a four-dispenser GDF to \$120,000 for a 12-dispenser GDF.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the administration or enforcement of the proposed rules. The agency estimates that there are 692 small businesses and 574 micro-businesses that would have to comply with the proposed rules for decommissioning. Some of these small and micro-businesses may begin decommissioning 30-calendar days after the EPA provides SIP approval, but they may choose to wait until the proposed August 31, 2018 deadline in order to maximize the initial and ongoing cost of installing and maintaining the equipment. Costs to decommission the Stage II equipment and cost savings due to the elimination of testing, inspection, maintenance, and repair costs are the same as those for large businesses. Cost savings for those small or micro-businesses who install new facilities would also be the same as those identified for large businesses.

There are approximately 282 registered Stage II testers and 61 companies that perform testing services as part of their operations. It is not known how many of these companies are small or micro-businesses, but most of them are thought to provide additional Petroleum Storage Tank/Vapor Recovery-related services such as line and tank testing, release detection monitoring, and routine equipment inspections to ensure compliance. While there is a possibility that some companies may be required to reduce staff, it is unlikely as most of these companies provide other services and have been anticipating the change in Vapor Recovery requirements.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required, because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required, because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory im-

pact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed rulemaking would amend §§115.240, 115.242 - 115.246, create new §115.241, and repeal §§115.241, 115.247, and 115.249. The revisions to Chapter 115 would specify that new GDFs are not required to install Stage II equipment and to allow existing GDFs in the current program areas to properly decommission Stage II equipment.

FCAA, §182(b)(3) provides that for certain nonattainment areas, states must revise their SIP to require all owners or operators of gasoline dispensing systems operating after November 15, 1990 to install a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. FCAA, §202(a)(6) requires the EPA to implement requirements for ORVR. Both Stage II and vehicle ORVR are types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. FCAA, §202(a)(6) also provides that the EPA may revise or waive the application of Stage II requirements if it determined that ORVR was in widespread use throughout the motor vehicle fleet. The EPA finalized a rulemaking on May 16, 2012 (*Federal Register*, 77 FR 28772) for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. This action allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS.

The proposed rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The proposed rulemaking will implement the EPA's rulemaking that was published May 16, 2012 (*Federal Register*, 77 FR

28772) for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet and waiving the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. Revisions to Chapter 115 specifying that owners of new GDFs are not required to install Stage II equipment and to allow existing owners of GDFs in the current program areas to properly decommission Stage II equipment is a necessary and required component of developing the SIP for nonattainment areas as required by 42 USC, §7410.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the

statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the proposed rulemaking would allow owners of new GDFs not to install Stage II equipment and allow owners of existing GDFs in the current program areas to properly decommission Stage II equipment. The EPA may grant the removal and waiver of Stage II equipment due to the widespread use of ORVR in the overall vehicle fleet. The proposed rules would permit these changes to occur in Texas. As explained previously in this preamble, vehicles equipped with ORVR technology provide greater pollution reduction benefits than Stage II control systems and are more cost-effective. The proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because although the proposed rulemaking meets the definition of a "major environmental rule," it does not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the proposed rulemaking is to specifying that new GDFs are not required to install Stage II equipment and to allow existing GDFs in the current program areas to properly decommission Stage II equipment as required by 42 USC, §7410. FCAA, §182(b)(3) provides that for certain nonattainment areas, states must revise their SIP to require all owners or operators of GDFs operating after November 15, 1990, to install a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. FCAA, §202(a)(6) also required the EPA to implement requirements for vehicle ORVR. Both Stage II and vehicle ORVR are types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. FCAA, §202(a)(6) also provided

that the EPA may revise or waive the application of Stage II requirements if it determined that ORVR was in widespread use throughout the motor vehicle fleet.

The EPA finalized a rulemaking on May 16, 2012 (*Federal Register*, 77 FR 28772), for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. This action allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. The EPA may grant the removal and waiver of Stage II equipment due to the widespread use of ORVR in the overall vehicle fleet. The proposed rulemaking and corresponding SIP would permit these changes to occur in Texas. As explained previously in the preamble, vehicles equipped with ORVR technology provide greater pollution reduction benefits than Stage II control systems and are more cost-effective. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The proposed rules fulfill the FCAA requirement to decommission Stage II equipment in nonattainment areas. These revisions will result in VOC emission reductions in ozone nonattainment areas, which may contribute to the timely attainment of the ozone standard and reduced public exposure to VOC emissions. Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. 31 TAC §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. 31 TAC §505.11(b)(4) applies to all other actions.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council Advisory Committee and determined that the revisions are consistent with CMP goals and policies, because the rulemaking is a fee rule, which is a procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the revisions will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the submittal of comments section of this preamble.

#### Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

#### Announcement of Hearings

The commission will hold public hearings on this proposal in El Paso on May 28, 2013, at 2:00 p.m., El Paso Public Library Auditorium, 501 N. Oregon; Beaumont at 2:00 p.m. on May 30, 2013, Texas Commission on Environmental Quality Region 10 Office, 3870 Eastex Freeway; Houston at 2:00 p.m., Houston-Galveston Area Council, 3555 Timmons, 2nd Floor, Room A on May 31, 2013; Arlington at 2:00 p.m. on June 3, 2013, Arlington City Council Chamber, 101 West Abram; Austin at 2:00 p.m. on June 4, 2013, Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building E, Room 201S. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to each hearing.

Persons who have special communication or other accommodation needs who are planning to attend a hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

#### Submittal of Comments

Comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-001-115-AI. The comment period closes June 10, 2013. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Santos Olivarez, Air Quality Planning Section, (512) 239-4718.

#### 30 TAC §§115.240 - 115.246

##### Statutory Authority

The amendments and new section are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the com-

mission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The new section is also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The new section is also proposed under THSC, §382.019, concerning methods used to control and reduce emissions from land vehicles, which authorizes the commission to adopt Stage II rules in nonattainment areas if demonstrated as necessary for attainment of the ozone National Ambient Air Quality Standard (NAAQS) or upon a determination that it is necessary to protect public health. The new section is also proposed under FCAA, 42 USC, §§7401, *et seq.*, which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state.

The amendments and new section implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.208 and FCAA, 42 USC, §§7401 *et seq.*

*§115.240. Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment.*

(a) The following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §§115.10, 101.1, and 3.2 of this title (relating to Definitions).

(1) Decommission--The permanent removal of the Stage II vapor control equipment at a gasoline dispensing facility.

(2) Gasoline dispensing facility--A location that dispenses gasoline to motor vehicles and includes retail, private, and commercial outlets.

(3) [(4)] Major system replacement or modification:

(A) the repair or replacement of any stationary storage tank equipped with a Stage II vapor recovery system;

(B) the replacement of an existing California Air Resources Board (CARB) certified Stage II vapor recovery system with a system certified by CARB under a different CARB Executive Order, or certified by an approved third-party;

(C) the repair or replacement of any part of a piping system attached to a stationary storage tank equipped with a Stage II vapor recovery system, excluding the repair or replacement of piping which is accessible for such repair or replacement without excavation or modification of the vapor recovery equipment; or

(D) the replacement of at least one fuel dispenser.

(4) [(2)] Onboard refueling vapor recovery--A system on motor vehicles designed to recover hydrocarbon vapors that escape during refueling.

(5) [(3)] Onboard refueling vapor recovery compatible--A Stage II vapor recovery system certified by CARB or other acceptable independent third-party evaluator, using test methods approved by the executive director, as onboard refueling vapor recovery (ORVR) compatible or a system listed in subsection (b) of this section, either of which maintains a required minimum overall system efficiency of 95% (as certified under third-party evaluation) while dispensing fuel without difficulty to both ORVR-equipped and non ORVR-equipped vehicles.

(6) [(4)] Owner or operator of a motor vehicle fuel dispensing facility--Any person who owns, leases, operates, or controls the gasoline [motor vehicle fuel] dispensing facility.

(b) The table contained in this subsection is a list of the Stage II vapor recovery systems certified by a CARB Executive Order in effect as of January 1, 2002.

Figure: 30 TAC §115.240(b) (No change.)

§115.241. Decommissioning of Stage II Vapor Recovery Equipment.

(a) The owner or operator of a gasoline dispensing facility may decommission Stage II vapor recovery equipment beginning 30-calendar days after the United States Environmental Protection Agency's approval of the repeal of the Stage II vapor recovery requirement and decommissioning requirements.

(b) Owners or operators of gasoline dispensing facilities decommissioning Stage II vapor recovery equipment shall comply with the following.

(1) The owner or operator shall submit written notification of decommissioning of the Stage II vapor recovery equipment at least 30-calendar days prior to the beginning of the activity to the appropriate Texas Commission on Environmental Quality (TCEQ) regional office and local government with jurisdiction where the gasoline dispensing facility is located.

(2) The owner or operator shall notify by either telephone, e-mail, or facsimile, the appropriate TCEQ regional office and local government with jurisdiction where the gasoline dispensing facility is located 24 to 72 hours prior to the beginning of decommissioning.

(3) The owner or operator shall provide with the written notification:

(A) dispensing facility name and location address;

(B) owner name, address, and phone number;

(C) operator name, address, and phone number;

(D) contractor name, address, phone number, and Underground Storage Contractor License number; and

(E) Stage II vapor recovery system information.

(4) The owner or operator shall perform and complete all of the following decommissioning activities, as applicable:

(A) initiating safety procedures;

(B) relieving pressure in the tank ullage by removing all pressure/vacuum vent valves;

(C) draining all liquid collection points;

(D) disconnecting all electrical components of the Stage II system so that no electrical hazards are created including but not limited to all vapor pumping or processing units and dispenser electronics;

(E) reprogramming the dispenser electronics to reflect that Stage II Vapor Recovery is no longer in service;

(F) securely sealing off the below-grade vapor piping at a height below the level of the base of the dispenser using only threaded plugs, threaded caps, or glued fittings;

(G) disconnecting and sealing off the vapor piping at the tank top if this can be done without excavation and without interfering with the vent line using only threaded plugs, threaded caps, or glue fittings;

(H) securely sealing the lower end of the vapor piping inside the dispenser cabinet using only threaded plugs, threaded caps, or glue fittings;

(I) replacing the Stage II hanging hardware with conventional, industry-standard hanging hardware;

(J) installing appropriate pressure/vacuum vent valve(s);

(K) removing any Stage II instructions from the dispenser cabinet;

(L) visually inspecting and verifying that the visible components of the storage system are left in a condition that will reliably prevent the release of any vapors or liquids from any components of the storage system;

(M) conducting the Texas test procedures TXP-102 (*Vapor Recovery Test Procedures Handbook*, RG-399, November 2002) and recording results on Form 102 indicating that the storage system is in a condition that will prevent leaking of vapors or liquids prior to restoring the facility to operating status;

(N) conducting the Texas test procedures TXP-103, Procedure 2, (*Vapor Recovery Test Procedures Hand Book*, RG-399, November 2002) recording results on Form 103 indicating that the vent lines are functioning in a condition that will prevent the leaking of vapors or liquids prior to restoring the facility to operating status;

(O) disconnecting the OPW VaporSavor or Arid Permeater vapor recovery systems if they are present on the Stage II system and sealing piping using only threaded plugs, threaded caps, or glue fittings; and

(P) disconnecting the central vacuum motor if present on the Stage II system and sealing piping using only threaded plugs, threaded caps, or glue fittings.

(5) The owner or operator shall notify the TCEQ regional office and local government with jurisdiction where the gasoline dispensing facility is located no later than ten calendar days after completion of decommissioning. Notification must include:

(A) a certified and signed document with the name, address, and license number of the licensed contractor who performed the decommissioning;

(B) name, address, and license number of the licensed contractor who performed the testing to ensure that no leaks have been detected; and

(C) copies of all required test results including the TX-102 and TX-103 tests.

(c) Owners or operators of all gasoline dispensing facilities, regardless of location in the state, shall have completed the decommissioning of all Stage II vapor recovery control equipment no later than August 31, 2018.

*§115.242. Control Requirements.*

(a) After May 16, 2012, the owner or operator of a newly constructed gasoline dispensing facility is no longer required to install Stage II vapor controls on its gasoline dispensing equipment in any county in the state of Texas. Gasoline dispensing facilities that did not have Stage II vapor controls as of May 16, 2012 due to a confirmed exemption because of low monthly throughput or low average monthly throughput are not subject to the requirements of this division.

(b) The owner or operator of every gasoline dispensing facility that has installed Stage II vapor controls shall complete decommissioning of Stage II vapor controls no later than August 31, 2018.

(c) All owners or operators of gasoline dispensing facilities decommissioning installed Stage II vapor controls shall comply with the requirements of §115.241 of this title (relating to Decommissioning of Stage II Vapor Recovery Equipment).

(d) Until the owner or operator of a gasoline dispensing facility decommissions Stage II vapor recovery controls that are installed at the gasoline dispensing facility, the owner or operator shall be subject to the following requirements of this section as well as the requirements of this division. [For all persons in the counties listed in §115.249 of this title (relating to Counties and Compliance Schedules) and affected by this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities), a vapor recovery system will be assumed to comply with the specified emission limitation of §115.241 of this title (relating to Emission Specifications) if the following conditions are met:]

(1) All installed [The facility is equipped with a] Stage II vapor recovery systems must be [system] certified by a California Air Resources Board (CARB) Executive Order in effect as of January 1, 2002 (as specified in §115.240(b) of this title (relating to Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment)); or certified by a CARB Executive Order in effect after January 1, 2002, except that the executive director reserves the right to continue to recognize any CARB Executive Orders decertified after January 1, 2002; or certified by an alternative procedure that [which] meets the requirements specified in §115.243 of this title (relating to Alternate Control Requirements). In addition:

(A) Stage II vapor recovery balance systems that [which] include vapor check valves in a location other than the nozzle may not be installed;

(B) Stage II vapor recovery systems that [which] include dual-hang (non-coaxial) hoses may not be installed; and

(C) all Stage II vapor recovery systems must be onboard refueling vapor recovery (ORVR) compatible, as defined in §115.240 of this title [in accordance with the schedules in §115.249 of this title].

(2) All underground piping must be installed by a person holding a valid License A as defined in §§334.401, 334.407, and 334.424 of this title (relating to License and Registration Required; Other Requirements for an Underground Storage Tank Contractor; and Other Requirements for an On-Site Supervisor). Piping specifications must be in compliance with the applicable CARB Executive Order(s) or third-party certification for the Stage II vapor recovery system. For any facility newly constructed after November 15, 1993, or at any facility undergoing a major modification to the Stage II vapor recovery system after November 15, 1993, the following requirements apply where piping specifications are not provided in the applicable CARB Executive Order(s) or third-party certification.

(A) All underground piping must be constructed of rigid material and conform to the applicable portions of the technical standards for new piping defined by §334.45(c) and (e) of this title



(relating to Technical Standards for New Underground Storage Tank Systems).

(B) Noncorrodible piping or cathodically protected metallic piping must be used. In the event metallic piping is used, the applicable portions of the general requirements for corrosion protection defined by §334.49(a)(1) - (5) and (c)(1) - (4) of this title (relating to Corrosion Protection) apply.

(C) Minimum slope on vapor piping must be 1/8 inch per foot from the dispenser to the storage tank. Piping installed after January 1, 2002 must not include liquid collection points (condensate traps) unless the associated underground storage tanks:

(i) were installed prior to November 15, 1992; and

(ii) are not at sufficient depth to allow for minimum slope requirements.

(D) Vapor piping on balance systems must be two inches or greater in diameter, and when there are more than four fueling points connected to one vapor line, the minimum vapor piping size must be three inches in diameter. For the purposes of this paragraph, a single nozzle dispenser constitutes one fueling point and a multi-nozzle dispenser constitutes two fueling points.

(E) Riser piping must have a minimum inside diameter of one inch and must slope towards the storage tank at all points. Riser piping is defined as the predominantly vertically oriented vapor recovery piping that enters the gasoline dispenser base, which connects the dispenser mounted piping with the buried vapor recovery piping that leads to one or more storage tanks.

(F) If a fire protection agency with jurisdiction requires a vapor shear valve on the vapor return line at the base of a dispenser, the shear valve must be CARB-certified and/or Underwriters Laboratories listed for use in vapor recovery systems.

(3) The owner or operator shall maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s) or third-party certification, and free of defects that would impair the effectiveness of the system, including, but not limited to:

(A) absence or disconnection of any component that is a part of the approved system;

(B) a vapor hose that is crimped or flattened such that the vapor passage is blocked, or the backpressure through the vapor system exceeds the value as certified in the approved system's CARB Executive Order(s) or third-party certification;

(C) a nozzle boot that is torn in one or more of the following ways:

(i) a triangular-shaped or similar tear more than 1/2 inch on a side;

(ii) a hole more than 1/2 inch in diameter; or

(iii) a slit more than one inch in length;

(D) for balance nozzles, a faceplate that is damaged such that the capability to achieve a seal with a fill pipe interface is affected for a total of at least one-fourth of the circumference of the faceplate;

(E) for booted nozzles in vacuum assist type systems, a flexible cone for which a total of at least one-fourth of the cone is damaged or missing;

(F) a nozzle shut-off mechanism that malfunctions in any manner;

(G) vapor return lines, including such components as swivels, anti-recirculation valves, and underground piping, that malfunction, are blocked, or are restricted such that the pressure decay and/or dynamic backpressure through the line exceeds the value as certified in the approved system's CARB Executive Order(s) or third-party certification;

(H) a vapor processing or control unit that is inoperative or defective;

(I) a vacuum producing device that is inoperative or defective;

(J) pressure/vacuum relief valves, vapor check valves, or Stage I dry breaks that are inoperative or defective;

(K) a system monitor or printer that is malfunctioning or out of paper;

(L) a nozzle, hose, break-away, or any other component that is not approved for use with the certified vapor recovery system in use; and

(M) any equipment defect that is identified in the certification of an approved system as substantially impairing the effectiveness of the system in reducing refueling vapor emissions.

(4) No gasoline leaks, as detected by sampling, sight, sound, or smell, exist anywhere in the dispensing equipment or Stage II vapor recovery system.

(5) Upon identification of any of the defects described in paragraphs (3) and (4) of this subsection [section], the owner or operator or his or her representative shall remove from service all dispensing equipment for which vapor recovery has been impaired. The impaired equipment must remain out of service until such time as the equipment has been properly repaired, replaced, or adjusted, as necessary. Once repaired, the equipment may be returned to service by the owner or operator or his or her representative.

(6) Upon identification of any of the defects described in paragraphs (3) and (4) of this subsection [section], any inspector with jurisdiction shall tag the impaired equipment out-of-order. The "Out-of-Order" tag must state "use of this device is prohibited under state law, and unauthorized removal of this tag or use of this equipment will constitute a violation of the law punishable by a maximum civil penalty of up to \$25,000 per day or a maximum criminal penalty of \$50,000 and/or up to 180 days in jail." The impaired equipment must remain out of service until such time as the equipment has been properly repaired, replaced, or adjusted, as necessary. After repairs are completed and verbal notification is given to the agency that originally tagged the equipment out of service, the "Out-of-Order" tag may be removed by the owner or operator or the facility representative and the equipment may be returned to service. Within ten days of placing the equipment back in service, written notification that the equipment has been returned to service must be provided by the owner or operator or the facility representative to the agency that originally tagged the equipment out-of-service. For the purposes of this paragraph, "facility representative" has the meaning ascribed to it in §115.248(1) of this title (relating to Training Requirements).

(7) No person shall repair, modify, or permit the repair or modification of the Stage II vapor recovery system or its components such that they are different from their approved configuration, and only original equipment manufacturer (OEM) parts or CARB-certified non-OEM aftermarket parts shall be used as replacement parts.

(8) No person shall tamper with, or permit tampering with, any part of the Stage II vapor recovery system in a manner that would impair the operation or effectiveness of the system.

(9) The owner or operator of a gasoline [motor vehicle fuel] dispensing facility shall post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system. These instructions, at a minimum, include:

(A) a clear description of how to correctly dispense gasoline using the system; and

(B) a warning against attempting to continue to refuel after initial automatic shutoff of the system (an indication that the vehicle fuel tank is full).

[(10) Any motor vehicle fuel dispensing facility that does not meet an exemption in §115.247 of this title (relating to Exemptions) shall have 120 days to come into compliance with the provisions of this division and will remain subject to the provisions of this division even if its gasoline throughput later falls below throughput limits, except that:]

[(A) at a facility exempted under §115.247(2) of this title for which an exceedance occurred between January 1, 1991, and November 15, 1992, the owner or operator may petition the executive director to permit a continuance of the facility's exempt status provided that the average monthly throughput calculated from January 1, 1991, to November 15, 1992, remained below 10,000 gallons. If exempt status is continued by the executive director, the annual verification of exempt status as required in §115.247(2) of this title must be fulfilled; and]

[(B) at a facility exempted under §115.247(2) of this title for which an exceedance occurred for any consecutive 30-day period due to an emergency condition or natural disaster after November 15, 1992, the owner or operator may petition the executive director to permit the continuance of the facility's exempt status or extended compliance schedule status. If exempt status is continued by the executive director, the requirement of annual verification of the status as stated in §115.247(2) of this title must be fulfilled.]

[(11) Any facility having installed Stage II vapor recovery system(s) or component(s) previously certified by CARB via an Executive Order, for which certification was revoked by CARB, prior to January 1, 2002, must install and have operational an approved system(s) or component(s) as referenced in paragraph (1) of this section as soon as practicable, but no later than September 1, 2006.]

[(12) After November 15, 1993, the owner or operator shall provide written notification of any Stage II vapor recovery system installation to the appropriate regional office and any local air pollution program with jurisdiction at least 30 days prior to start of construction. The information in the notification shall include, but is not limited to:]

[(A) facility name; location (physical and mailing address); name, address, and phone number of owner(s) and operator(s); name and phone number of owner's representative; name, address, and phone number of contractor(s); and the Petroleum Storage Tank Facility ID number and Owner ID number (if known);]

[(B) proposed start date; and]

[(C) type of Stage II system to be installed, including CARB Executive Order number(s) or third-party certification number(s) and the number of gasoline nozzles at the facility.]

#### *§115.243. Alternate Control Requirements.*

Alternate methods of complying with §115.242(d)(1) [§115.242(1)] of this title (relating to Control Requirements) may be approved by the executive director if:

(1) emission reductions are demonstrated to be equivalent or greater than those afforded by the requirements in §115.242(d)(1) [§115.242(1)] of this title; and

(2) the Stage II vapor recovery system is capable of meeting the applicable performance requirements prescribed in this division [(relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities);] as certified by third-party evaluation conducted by a qualified independent testing organization using a code or standard of practice, acceptable to the executive director, which has been developed by a nationally recognized agency, association, or independent testing laboratory.

#### *§115.244. Inspection Requirements.*

The owner or operator of any gasoline [motor vehicle fuel] dispensing facility subject to the control requirements of this division [(relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities)] shall conduct daily inspections of the Stage II vapor recovery system for the defects specified in §115.242(d)(3) and (4) [§115.242(3) and (4)] of this title (relating to Control Requirements) as follows.

(1) For all systems, the daily inspections must [shall] include the applicable portions of §115.242(d)(3)(A) - (F), (H), and (K), and (4) [§115.242(3)(A) - (F), (H), and (K); and (4)] of this title.

(2) For assist systems that use a processor, indicating mechanisms designed by the Stage II vapor recovery equipment manufacturer to verify proper operation must [shall] be inspected daily. Examples of these indicating mechanisms include flame detection sensors, remote (from the processor) visual or audible displays indicating system operation, or other means as described in the applicable Executive Order for the system.

(3) For all systems, the components listed in §115.242(d)(3)(J) [§115.242(3)(J)] of this title must [shall] be inspected at least monthly.

(4) For all systems, the components listed in §115.242(d)(3)(G) [§115.242(3)(G)] of this title must [shall] be inspected at least annually.

#### *§115.245. Testing Requirements.*

For owners or operators of gasoline dispensing facilities that have not yet decommissioned Stage II vapor controls and must repair, replace, or retain Stage II vapor controls up to the decommissioning deadline of August 31, 2018, compliance with §115.242 of this title (relating to Control Requirements) must be determined at the gasoline dispensing facility as follows. [For all affected persons, compliance with §115.241 and §115.242 of this title (relating to Emission Specifications and Control Requirements) shall be determined at each gasoline dispensing facility by testing as follows:]

(1) Within 30 days of installation, at least once every 36 months thereafter, and upon major system replacement or modification, Stage II vapor recovery systems must successfully meet the performance criteria proper to the system by successfully completing the following testing requirements using the test procedures as found in the commission's Vapor Recovery Test Procedures Handbook (test procedures handbook) (RG-399, November 2002).

(A) For balance and assist systems:

(i) the manifolding or interconnectivity of the vapor space must be consistent with the Executive Order or third-party certification requirements for the installed system (Texas test procedure TXP-101 or equivalent);

(ii) the sum of the vapor leaks in the system must not exceed acceptable limits for the system as defined in the pressure decay test (Texas test procedure TXP-102 or equivalent);

(iii) the maximum acceptable backpressure through a given vapor path must not exceed the limits as found in the backpressure/liquid blockage test applicable for the vapor path for the system (Texas test procedure TXP-103 or equivalent); and

(iv) the maximum gasoline flow rate through the nozzle must not exceed the limits found in the Executive Order or third-party certification for the system (Texas test procedure TXP-104 or equivalent).

(B) For bootless nozzle assist systems, the volume-to-liquid ratio (V/L ratio) or air-to-liquid ratio (A/L ratio) must be within acceptable limits (Texas test procedure TXP-106 or equivalent).

(C) Each system must meet minimum performance criteria specific to the individual system as defined in the California Air Resources Board (CARB) Executive Order or third-party certification. The criteria and test methods contained in the test procedures handbook specified in paragraph (1) of this section must take precedence for applicable tests where performance criteria exist in both the Executive Order and the test procedures handbook; otherwise, the Executive Order specific criteria must take precedence.

(2) Verification of proper operation of the Stage II equipment must be performed in accordance with the test procedures referenced in paragraph (1) of this section at least once every 12 months. The verification must include all functional tests that were required for the initial system test, except for TXP-101, Determination of Vapor Space Manifolding of Vapor Recovery Systems at Gasoline Dispensing Facilities, and TXP-103, Determination of Dynamic Pressure Performance (Dynamic Back-Pressure) of Vapor Recovery Systems at Gasoline Dispensing Facilities, which must be performed at least once every 36 months.

(3) The owner or operator, or his or her representative, shall provide written notification to the appropriate regional office and any local air pollution program with jurisdiction of the testing date and time and of whom will conduct the test. The notification must be received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days in advance of the test, and the notification must contain the information and be in the format as found in the test procedures handbook. Notification may take the form of a facsimile or telecopier transmission, as long as the facsimile is received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days prior to the test and it is followed up within two weeks of the transmission with a written notification. The owner or operator, or his or her representative, shall give at least 24-hour notification to the appropriate regional office and any local air pollution program with jurisdiction if a scheduled test is cancelled. In the event that the test cancellation is not anticipated prior to 24 hours before the scheduled test, the owner or operator, or his or her representative, shall notify the appropriate regional office and any local air pollution program with jurisdiction as soon in advance of the scheduled test as is practicable.

(4) Minor modifications of these test methods may only be used if they have been approved by the executive director.

(5) All required tests must be conducted either in the presence of a Texas Commission on Environmental Quality or local program inspector with jurisdiction, or by a person who is registered with the executive director to conduct Stage II vapor recovery tests. The requirement to be registered must ~~shall~~ begin on November 15, 1993, or 60 days after the executive director has established the registry,

whichever occurs later. The executive director may remove an individual from the registry of testers for any of the following causes:

(A) the executive director can demonstrate that the individual has failed to conduct the test(s) properly in at least three separate instances; or

(B) the individual falsifies test results for tests conducted to fulfill the requirements of this section.

(6) The owner or operator, or his or her representative, shall submit the results of all tests required by this section to the appropriate regional office and any local air pollution control program with jurisdiction within ten working days of the completion of the test(s) using the format specified in the test procedures handbook. For purposes of on-site recordkeeping, the Test Procedures Results Cover Sheet, properly completed with the summary of the testing, is acceptable. The detailed results from each test conducted along with a properly completed summary sheet, as provided for in the test procedures handbook, must be submitted to the appropriate regional office and any local air pollution control program with jurisdiction.

*§115.246. Recordkeeping Requirements.*

The owner or operator of any gasoline ~~motor vehicle fuel~~ dispensing facility subject to the control requirements of this division ~~[(relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities)]~~ shall maintain the following records:

(1) a copy of the California Air Resources Board (CARB) Executive Order(s) or third-party certification(s) for the Stage II vapor recovery system and any related components installed at the facility;

(2) a copy of any owner or operator request for executive director approval under §115.243 of this title (relating to Alternate Control Requirements) and any executive director approval issued under §115.243 of this title;

(3) a record of any maintenance conducted on any part of the Stage II equipment, including a general part description, the date and time the equipment was taken out of service, the date of repair or replacement, the replacement part manufacturer's information, a general description of the part location in the system (e.g., pump or nozzle number, etc.), and a description of the problem;

(4) proof of attendance and completion of the training specified in §115.248 of this title (relating to Training Requirements), with the documentation of all Stage II training for each employee to be maintained as long as that employee continues to work at the facility;

(5) a record of the results of testing conducted at the gasoline ~~motor vehicle fuel~~ dispensing facility in accordance with the provisions specified in §115.245 of this title (relating to Testing Requirements);

(6) a record of the results of the daily inspections conducted at the gasoline ~~motor vehicle fuel~~ dispensing facility in accordance with the provisions specified in §115.244 of this title (relating to Inspection Requirements); ~~[and]~~

(7) copies of all notifications and records sufficient to demonstrate compliance with the applicable decommissioning steps listed in §115.241 of this title (relating to Decommissioning of Stage II Vapor Recovery Equipment), including all required test results, kept on site for five years following the completion of the decommissioning activity; and

(8) ~~[(7)]~~ the CARB Executive Order(s) or third party certification(s) specified in paragraph (1) of this section, any applicable alternate method of control requirement approval specified in paragraph (2) of this section, and testing results specified in paragraph (5) of this

section be kept on site indefinitely. Records of all maintenance conducted on Stage II equipment specified in paragraph (3) of this section, proof of attendance and completion of training as specified in paragraph (4) of this section, and records of daily inspections as specified in paragraph (6) of this section must be maintained for at least two years. Decommissioning records in paragraph (7) of this section must be maintained for at least five years. [all records shall be maintained for at least two years, except that the CARB Executive Order(s) or third-party certification(s) specified in paragraph (1) of this section; any applicable alternate method of control requirement approval specified in paragraph (2) of this section; and testing results specified in paragraph (5) of this section shall be kept on-site indefinitely.] These records shall be:

(A) kept on site [on-site] at facilities ordinarily manned during business hours[,] and made immediately available for review upon request by authorized representatives of the executive director, United States Environmental Protection Agency (EPA) [EPA] or any local air pollution control program with jurisdiction; or

(B) for gasoline dispensing facilities unmanned at the time of inspection, made available at the site within 48 hours after being requested by authorized representatives of the executive director, EPA, or any local air pollution control program with jurisdiction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 26, 2013.

TRD-201301663

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: June 9, 2013

For further information, please call: (512) 239-2141



### 30 TAC §§115.241, 115.247, 115.249

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### Statutory Authority

The repealed sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under the Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repealed sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and

protect the public from exposure to hazardous air contaminants from motor vehicles.

The repealed sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.208 and FCAA, 42 USC, §§7401 et seq.

§115.241. *Emission Specifications.*

§115.247. *Exemptions.*

§115.249. *Counties and Compliance Schedules.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 26, 2013.

TRD-201301664

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: June 9, 2013

For further information, please call: (512) 239-2141



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

#### SUBCHAPTER O. STATE SALES AND USE TAX

#### 34 TAC §3.282

The Comptroller of Public Accounts proposes an amendment to §3.282, concerning auditing taxpayer records. This section is amended to implement provisions of House Bill 3319, 80th Legislature, 2007, and Senate Bill 1, 82nd Legislature, First Called Session, 2011.

House Bill 3319, 80th Legislature, 2007, repealed Tax Code, §151.0232, relating to the CPA audit program. To implement this statute, subsections (a)(1) and (g) of the current rule are deleted, and the following subsections are relettered accordingly.

Subsection (f)(7) is amended to add a cross-reference to §3.325 of this title (relating to Refunds and Payments Under Protest).

Subsection (i), formerly subsection (j), is amended to implement Senate Bill 1, 82nd Legislature, First Called Session, 2011, and state that a taxpayer claiming a refund or credit is required to keep contemporaneous documentation to substantiate the refund or credit for a minimum of four years and longer in some circumstances.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying for taxpayers the agency's auditing policy. This rule is proposed under Tax Code,

Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, as well as taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §111.0041.

§3.282. *Auditing Taxpayer Records.*

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

~~[(1) Certified Public Accountant (CPA) Audit Program--A program that the comptroller creates under Tax Code, §151.0232, in which a taxpayer may hire a certified public accountant who is not employed by the comptroller to perform a sales and use tax audit to determine a taxpayer's liability under Tax Code, Chapter 151.]~~

(1) ~~[(2)]~~ Managed audit--A taxpayer self-review and analysis of invoices, checks, accounting records, or other documents or information to determine a taxpayer's liability for tax under Tax Code, Chapter 151, as allowed under a written agreement with the comptroller authorizing a managed audit as described in subsection (f) of this section.

(2) ~~[(3)]~~ Percentage-based reporting method--A method by which a direct payment permit holder may be authorized to categorize purchase transactions according to standards specified in a letter of authorization issued under the provisions set out in subsection ~~(g)~~ ~~[(h)]~~ of this section, reviews an agreed-on sample of invoices in those categories to determine the percentage of taxable transactions, and uses that percentage to calculate the amount of tax to be reported.

(b) The comptroller or an authorized representative of the comptroller may audit a taxpayer's accounts and records at any time during regular business hours at the discretion of the comptroller or the comptroller's authorized agent or representative.

(c) The comptroller may use a detailed auditing procedure or a sample and projection auditing method to determine tax liability. Sampling procedure may include manual sampling techniques and computer-assisted audit techniques, whichever produce the most accurate results in the most efficient manner.

(d) A sample and projection auditing method is appropriate if:

(1) the taxpayer's records are so detailed, complex, or voluminous that an audit of all detailed records would be unreasonable or impractical;

(2) the taxpayer's records are inadequate or insufficient, so that a competent audit for the period in question is not otherwise possible; or

(3) the cost of an audit of all detailed records to the taxpayer or to the state will be unreasonable in relation to the benefits derived, and sampling procedures will produce a reasonable result.

(e) Before using a sample technique to establish a tax liability, the comptroller must notify the taxpayer in writing of the sampling procedure to be used.

(f) The comptroller may authorize taxpayers that meet certain requirements to perform managed audits.

(1) A taxpayer who wishes to participate in a managed audit must request authorization from the comptroller's office to conduct a managed audit under this section. Authorization will only be granted as part of a written agreement between the taxpayer and the comptroller's office. The agreement must:

(A) be signed by an authorized representative of the comptroller and the taxpayer; and

(B) specify the period to be audited and the procedure to be followed.

(2) In determining whether to authorize a managed audit, the comptroller may consider, in addition to other factors the comptroller considers relevant:

(A) the taxpayer's history of tax compliance, including [taxpayer]:

(i) timely filing of all reports;

(ii) timely payment of all taxes and fees due the state;

(iii) prior audit history;

(iv) delinquency in other taxes;

(v) correction of problems identified;

(vi) collection of tax that was not remitted; and

(vii) whether a penalty waiver had been denied on prior occasions and the reason for denial;[-]

(B) the amount of time and resources the taxpayer has available to dedicate to the audit;

(C) the extent, availability, and completeness of the taxpayer's records for the period to be covered by the managed audit;

(D) the taxpayer's ability to pay any expected liability; and

(E) the size and sophistication of the taxpayer.

(3) The decision to authorize or not authorize a managed audit rests solely with the comptroller.

(4) A managed audit may be limited to certain categories of liability under Tax Code, Chapter 151, including tax on:

(A) sales of one or more types of taxable items;

(B) purchases of assets;

(C) purchases of expense items;

(D) purchases under a direct payment permit; or

(E) any other category specified in an agreement authorized by this section.

(5) Before the audit is finalized, the comptroller may examine records that the comptroller determines are necessary to verify the results.

(6) Unless the audit or information reviewed by the comptroller under this subsection discloses fraud or willful evasion of the tax, the comptroller may not assess a penalty and may waive all or part

of the interest that would otherwise accrue on any amount identified to be due in a managed audit. This subsection does not apply to any amount collected by the taxpayer that was a tax or represented to be a tax but was not remitted to this state.

(7) Except as provided by applicable law, the taxpayer is entitled to a refund of any tax overpayment disclosed by a managed audit. See §3.325 of this title (relating to Refunds and Payments Under Protest).

~~[(g)]~~ The comptroller may authorize taxpayers who meet certain requirements to participate in the CPA Audit Program. For more information, see §3.368 of this title (relating to Certified Public Accountant (CPA) Audit Program).

(g) ~~[(h)]~~ The comptroller may authorize direct payment permit holders that meet certain requirements to report tax on purchases using a percentage-based reporting method.

(1) A holder of a direct payment permit may request authorization from the comptroller to use a percentage-based reporting method. The authorized percentage must be used for a three-year period specified by the comptroller, unless the authorization is revoked by the comptroller.

(2) The authorization to report under this subsection may be revoked if the comptroller determines that the percentage being used is no longer representative because of a change in the taxpayer's business operations or in law, including a change in the interpretation of a law or rule. For example, two decisions from the Court of Appeals changed the list of items that may be purchased tax free by manufacturers. Subsequently the legislature passed two bills that significantly changed the tax responsibilities of manufacturers. Each of these changes affected a manufacturer's percentage used to report taxable purchases.

(3) The decision of the comptroller to deny or revoke authorization under this section is not subject to appeal.

(4) When authorizing reporting under this section, the comptroller may categorize transactions by dollar amount, by type of taxable item purchased, by the purpose for which the taxable item will be used, or by other standards appropriate to the taxpayer's operations.

(h) ~~[(i)]~~ A taxpayer who holds a permit issued under Tax Code, Chapter 151, who has paid Texas tax in error on purchases of taxable items, whether sales tax was remitted directly to this state or to a retailer holding a permit under Tax Code, Chapter 151, may compute the amount of overpayment by use of a projection based on a sampling of transactions.

(1) The sampling method must be one that has been approved by the comptroller.

(2) The taxpayer must record the method by which the projection and computation were performed and must make available, on request by the comptroller, information explaining the method employed and the records on which the projection and computation were based.

(i) ~~[(j)]~~ A taxpayer who holds a permit issued under Tax Code, Chapter 151, may obtain reimbursement for amounts determined to have been overpaid by taking a credit on one or more sales tax returns or by filing a claim for refund with the comptroller within the limitation period specified by Tax Code, Chapter 111. See §3.325 of this title; (relating to Refunds, Interest, and Payments Under Protest). A taxpayer is required to keep contemporaneous records to substantiate and enable verification of the taxpayer's credit or refund claim for a minimum of four years from the date on which the record is made, and throughout any period in which any tax, penalty, or interest may be

assessed, collected, or refunded by the comptroller, or in which an administrative hearing or judicial proceeding is pending, unless the comptroller authorizes in writing a shorter retention period.

(1) A taxpayer may take a credit by amending the sales tax return for the period in which the tax was originally paid.

(2) If a taxpayer chooses to take the credit by claiming a refund, the claim must identify the period in which the tax was originally paid.

(3) A taxpayer who claims a credit or submits a refund request for local taxes must identify the period in which the local tax was paid and the local taxing jurisdiction to which the local tax was reported.

(4) Interest will be paid on tax amounts found to be erroneously paid for reports due on or after January 1, 2000, whether claimed on a request for refund or claimed in an audit. See also §3.325 of this title ~~[(relating to Refunds, Interest, and Payments Under Protest)]~~ and Tax Code, §111.064.

(j) ~~[(k)]~~ If records are inadequate to accurately reflect the business operations of the taxpayer, the auditor will determine the best information available and base the audit report on that information. See §3.281 of this title (relating to Records Required; Information Required) for information on proper records.

(k) ~~[(l)]~~ Resale and exemption certificates.

(1) Resale and exemption certificates should be available at the time of the audit. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained.

(2) The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller. Written notice shall be given by the comptroller upon the filing of a petition for redetermination or claim for refund. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date. If the seller is not in possession of the certificates within 60 days from the date written notice is given by the comptroller that certificates pertaining to periods or transactions specified in the notice are required, any deductions claimed which require resale or exemption certificates will be disallowed. Exemptions claimed by those certificates acquired during this 60-day period will be subject to independent verification by the comptroller before the deductions will be allowed. Certificates delivered after the 60-day period will not be accepted. See §3.285 of this title (relating to Resale Certificate; Sales for Resale; Resale Certificate); §3.287 of this title (relating to Exemption Certificates); and §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(3) When a 60-day letter has been received, a resale or exemption certificate is the only acceptable proof that a taxable item was purchased for resale or qualifies for exemption.

(l) ~~[(m)]~~ Both sellers and purchasers are subject to audit and assessment of tax on any transactions on which tax was due but has not been paid.

(m) ~~[(n)]~~ The comptroller may proceed against either the seller or purchaser, or against both, until the tax, penalty, and interest have been paid.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 22, 2013.

TRD-201301614

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: June 9, 2013

For further information, please call: (512) 475-0387



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 5. TEXAS VETERANS LAND BOARD**

#### **CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD**

##### **SUBCHAPTER A. GENERAL RULES AND CONTRACTING FINANCING**

###### **40 TAC §175.18**

The Texas Veterans Land Board (the "Board") proposes an amendment to §175.18, concerning Resale of Forfeited Land. This amendment will allow the Board to finance the purchase of a forfeited tract of land by a non-veteran, through the use of a note and deed of trust.

Section 161.319(a) of the Natural Resources Code authorizes the Board to sell forfeited tracts under terms and conditions and at the time and in the manner prescribed by the Board in its rules, the provisions of this chapter notwithstanding. By prior action the Board authorized the resale of forfeited tracts to veterans by way of a note and deed of trust. The Board finds that it is in the best interest of the program to also be able to resell forfeited tracts to non-veterans by way of a mortgage. This amendment to §175.18 will allow for the sale of forfeited tracts to non-veterans by a note and deed of trust.

Paul E. Moore, Executive Secretary of the Veterans Land Board, has determined that for each year of the first five years that the section as proposed will be in effect, there will be no significant fiscal implication to state or local government as a result of administering this section as amended.

Mr. Moore has determined that for each year of the first five years that the section as proposed will be in effect, the public will benefit as a result of the flexibility given the Board to resell forfeited tracts.

Mr. Moore has determined that the proposed amendment will not impose any direct adverse economic effects on small busi-

nesses, micro-businesses, or persons required to comply. Accordingly, the agency has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

Mr. Moore has determined that during each year of the first five years the proposed amendment is in effect, the anticipated impact on local employment will be insignificant.

Mr. Moore has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

Comments may be submitted to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311, or email [walter.talley@glo.texas.gov](mailto:walter.talley@glo.texas.gov). Written comments must be received no later than 5:00 p.m. thirty (30) days after publication.

The amendment is proposed under the Natural Resources Code, Title 7, Chapter 161, §§161.001, 161.061, 161.063, and 161.319. These sections authorize the Board to adopt rules that it considers necessary and advisable for the Veterans' Land Program.

The amendment affects §161.319 of the Natural Resources Code.

###### *§175.18. Resale of Forfeited Land.*

(a) - (b) (No change.)

(c) Sale of forfeited tracts.

(1) (No change.)

(2) Terms of sale.

(A) - (C) (No change.)

(D) Type II tracts shall be sold to an eligible veteran or non-veteran under a contract of sale and purchase or under a note and deed of trust.

(3) - (7) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 29, 2013.

TRD-201301681

Larry Laine

Chief Clerk, Deputy Land Commissioner, General Land Office

Texas Veterans Land Board

Earliest possible date of adoption: June 9, 2013

For further information, please call: (512) 475-1859



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 2. EMERGENCY PREPAREDNESS

##### 25 TAC §2.1

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §2.1 concerning the Preparedness Coordinating Council (PCC) without changes to the proposed text as published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9740) and, therefore, the section will not be republished.

##### BACKGROUND AND PURPOSE

The amendment is necessary to comply with Health and Safety Code, §11.016, which authorizes the department to establish advisory committees; and Title 42 United States Code, §247d-3a(b), which requires an advisory committee or other similar mechanism to provide the department advice on public health preparedness. The PCC is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 2.1 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

##### SECTION-BY-SECTION SUMMARY

Amendments to §2.1 clarify the responsibilities of the PCC in state-level and national preparedness and modify wording and punctuation of the rule. References to the State Health Services Council were removed and replaced with the department in the rule.

Specifically, subsection (c) defines the purpose of the PCC, including multidisciplinary strategic review forum and the role of the PCC related to the National Response Framework, Annex Emergency Support Function (ESF)-8 concerning public health and medical, in providing the structure for coordinating interagency support for response to an incident. Subsection (d) identifies the PCC for providing guidance to better coordination between state and local efforts to carry out strategic and operational tasks as assigned by the department. Amendments to subsection (e) remove time constraints governing the PCC's continuance/abolishment, while clarifying its division of membership between department staff and external membership. The PCC composition and appointment, terms of service, meeting quo-

rum requirements and expectations of the membership are established in the amendments to subsections (g), (h) and (i). Subsection (j) adds that the department or contractors shall provide support for the PCC. Subsection (k) reemphasizes the PCC's commitment to consider the needs of the population with functional and access needs in deliberations and that the department staff or its contractors will take the minutes of the meetings. References to subcommittees and membership were deleted in subsections (l) - (n).

##### COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenter was an individual and was not against the rule in its entirety; however, the commenter suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning the composition of the PCC, the commenter proposed a PCC composition of 24 members.

Response: The commission disagrees because the composition of the PCC, 18 members, currently provides the needed policy and operational perspectives and includes appropriate local representatives. No change was made to the rule as a result of this comment.

Comment: The commenter proposed that internal staff members of the PCC should not be on the PCC.

Response: The commission disagrees because the department staff serving on the PCC includes key staff that are most essential in providing the PCC with the details needed for an effective discussion to generate the most relevant PCC feedback. They are also the staff that will follow through and apply the advice provided by the PCC. No change was made to the rule as a result of this comment.

Comment: The commenter suggested that the proposed rule should be submitted to the Mayors and County Judges in the State of Texas.

Response: In this case, comment from Mayors and County Judges on proposed rules is always welcome and encouraged. The department does not directly solicit feedback from Mayors and County Judges for state advisory committee rules but would welcome comments submitted during the open comment period. No change was made to the rule as a result of this comment.

##### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.



## STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §11.016, which authorizes the Health and Human Services Commission to establish advisory committees; Title 42 United States Code §247d-3a(b), which requires an advisory committee or other similar mechanism to provide the department advice on public health preparedness; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 29, 2013.

TRD-201301682

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: May 19, 2013

Proposal publication date: December 14, 2012

For further information, please call: (512) 776-6972



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 11. CONTRACTS

#### SUBCHAPTER A. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

##### 30 TAC §11.1

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendment to §11.1 without change to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9466) and will not be republished.

##### Background and Summary of the Factual Basis for the Adopted Rule

The Texas Comptroller of Public Accounts (Comptroller) conducted a disparity study in 2009 and as the result of the new study, made revisions to 34 TAC Part 1, Chapter 20, Subchapter B (Historically Underutilized Business (HUB) rules). These revisions became effective on September 14, 2011. A state agency is required by Texas Government Code, §2161.003 to adopt the HUB rules. TCEQ's current rule adopting the HUB rules by reference refers to a previous version of the rule and does not reflect the current numbering of the rule.

##### Section Discussion

##### §11.1, *Historically Underutilized Business Program*

The commission adopts the amendment to §11.1 to update the reference to the Texas Comptroller of Public Accounts HUB

rules. Should TCEQ not adopt this amended rule, TCEQ's rule will reference outdated HUB rules and incorrect rule numbers.

##### Final Regulatory Impact Determination

The commission reviewed the adopted amendment in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted amendment is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule." The intent of the adopted rulemaking is to reflect the current numbering of the Comptroller's HUB rules. The changes are not expressly to protect the environment and reduce risks to human health and environment.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received.

##### Takings Impact Assessment

The commission evaluated this adopted rule and performed an assessment of whether this adopted amendment constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this amendment is to update and correct references to rules. Promulgation and enforcement of this adopted amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

##### Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. There were no comments received.

##### Public Comment

The comment period closed on January 7, 2013. No comments were received.

##### Statutory Authority

The amendment is adopted under the Texas Water Code, §5.013, Rules, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and any other laws of the state.

The adopted amendment implements the Texas Comptroller of Public Account's Historically Underutilized Business rules under 34 TAC Part 1, Chapter 20, Subchapter B, as required by Texas Government Code, §2161.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2013.

TRD-201301666

David Timberger  
Director, General Law Division  
Texas Commission on Environmental Quality  
Effective date: May 16, 2013  
Proposal publication date: November 30, 2012  
For further information, please call: (512) 239-0779

## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 4. SCHOOL LAND BOARD**

#### **CHAPTER 155. LAND RESOURCES**

##### **SUBCHAPTER A. COASTAL PUBLIC LANDS**

###### **31 TAC §155.15**

The School Land Board (Board) adopts amendments to 31 TAC §155.15, concerning Fees. The amendments are adopted without changes to the proposed text as published in the March 22, 2013, issue of the *Texas Register* (38 TexReg 1951) and will not be republished.

###### **BACKGROUND AND REASONED JUSTIFICATION**

The adopted rulemaking corrects errors in the current rent and fee tables for 31 TAC §155.15(b)(1)(C)(iii) (relating to rents and fees for Category III residential use coastal easements) and 31 TAC §155.15(b)(1)(C)(v) (relating to rents and fees for structure (cabin) permits). Specifically, the adopted amendment to §155.15(b)(1)(C)(iii) adds an item to clarify the rent for covered second levels associated with Category III residential use coastal easements. The adopted amendment to §155.15(b)(1)(C)(v) deletes the fourth footnote in the current rent and fee table for cabin permits, as the fourth footnote refers to an item of additional rent that is incorrect and inapplicable.

The justification for the adopted rulemaking is that the amendments are needed to accurately reflect current Board policy regarding the rents and fees that apply to residential use coastal easements and cabin permits. Adoption of the amendments will ensure that applicants and members of the public are informed of the correct rents and fees for the use of coastal public lands.

###### **ENVIRONMENTAL REGULATORY ANALYSIS**

The Board evaluated the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

###### **CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM**

The Board evaluated the adopted rulemaking action in light of the consistency requirements of the Coastal Management Program

(CMP), including 31 TAC §501.12 (relating to Goals), §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands), and §501.25 (relating to Policies for Dredging and Dredged Material and Placement). Because all requests for the use of coastal public lands must continue to meet the same criteria for Board approval, the Board determined that the amendments are consistent with the applicable CMP goals and policies. No comments were received from the public or the Commissioner of the GLO regarding the consistency determination. Consequently, the GLO has determined that the amendments are consistent with the applicable CMP goals and policies.

###### **PUBLIC COMMENT**

No comments were received regarding the amendments.

###### **STATUTORY AUTHORITY**

The amendments are adopted under the Texas Natural Resources Code §§33.101 - 33.136, relating to the Board's ability to grant rights in coastal public land, and Texas Natural Resources Code §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Chapter 33, Texas Natural Resources Code.

No other statutes, articles or codes are affected by adoption of the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 25, 2013.

TRD-201301651

Larry L. Laine

Chief Clerk, Deputy Land Commissioner, General Land Office  
School Land Board

Effective date: May 15, 2013

Proposal publication date: March 22, 2013

For further information, please call: (512) 475-1859

## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 3. ADMINISTRATIVE RESPONSIBILITIES OF STATE FACILITIES**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §3.101, concerning definitions, and new §§3.601 - 3.608, concerning general provisions; mechanical devices; evaluation and assessment; imminent harm resulting from a behavioral crisis; imminent harm resulting from a medical or dental procedure; imminent harm resulting from documented self-injurious behavior; release; and reporting, tracking, and documentation in new Subchapter F, Restraints, in Chapter 3, Administrative Responsibilities of State Facilities. The amendment to §3.101 and new §§3.601, 3.603, 3.604, and 3.606 - 3.608 are adopted with changes to the proposed text published

in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8767) and will be republished. New §3.602 and §3.605 are adopted without changes to the proposed text.

The amendment and new sections are adopted to implement Senate Bill (S.B.) 41, 82nd Legislature, Regular Session, 2011. S.B. 41 prescribes limits for the use of restraints on an individual residing in a state supported living center (SSLC) or the Rio Grande State Center. The adopted repeal of current rules related to restraint in Chapter 5, Subchapter H, is published elsewhere in this issue of the *Texas Register*.

DADS received written comments from Disability Rights Texas, the Hogg Foundation for Mental Health, Logan Consulting, Inc., and one individual. A summary of the comments and the responses follows.

Comment: A commenter suggested that DADS review S.B. 325, 79th Legislature, Regular Session, 2005; recommendations of the S.B. 325 work group; and the "Six Core Strategies" developed by the National Technical Assistance Center, to determine if the rules are consistent with the tenets of these documents.

Response: 40 TAC §90.42(e)(3) - (4) addresses provisions in S.B. 325, relating to restraint and seclusion, and the rules are consistent with basic elements of the "Six Core Strategies" and the S.B. 325 work group recommendations. In accordance with S.B. 325 work group recommendation 1, 40 TAC §9.229(c) requires facilities to collect and report aggregate data monthly on the use of restraints and to perform self-evaluations on the data. In addition, 40 TAC Chapter 3, Subchapter D, specifies training requirements for facility staff in accordance with S.B. 325 work group recommendation 4. Further, the new rules implement S.B. 41, 81st Legislature, Regular Session, 2011, and are consistent with current, generally accepted practices across the country, the state's 2009 Settlement Agreement with the U.S. Department of Justice (2009 Settlement Agreement), S.B. 325, and the S.B. 325 work group recommendations.

Comment: Two commenters questioned whether the definitions and terminology used in the proposed rules differ from those used in restraint rules and policies of other HHSC agencies, but neither gave an example of such differences. These commenters argued that variances in definitions negatively impact data collection and the ability to make comparisons between agencies, impairing the ability to learn from each other, which they state was the goal of S.B. 325. Additionally, these commenters recommended that DADS postpone adoption of the proposed rules until further research is performed on these documents.

Response: The definitions in the rules are consistent with definitions in the 2009 Settlement Agreement, as well as applicable statutes and regulations. The agency disagrees that it is necessary to delay the adoption of these rules based upon the reasons provided by these commenters.

Comment: A commenter stated that the proposed rules do not appear to consider practices such as the use of comfort, de-escalation rooms/tools, use of peer support, and debriefing with staff and individuals to teach individuals how to de-escalate themselves.

Response: While the rules primarily govern requirements related to the use of restraints and the release of individuals from restraints, they also generally address practices and interventions to avoid the use of restraints. For example, §3.603(b)(2) requires the interdisciplinary team (IDT) to take into considera-

tion previous trauma that an individual has experienced in considering the use of restraint. Section 3.603(e)(4) requires an individual support plan (ISP) action plan to address a broad range of changes with the intent to reduce or eliminate the use of restraints, including changing living arrangements, implementing calming procedures, and incorporating preferences in programs. Section 3.603(g)(4) requires a facility to develop and implement an ISP action plan that includes a description of prevention procedures to be followed as the individual's behavior indicates an escalation of behaviors that are dangerous and likely to result in restraint. Section 3.604(b)(3) requires a graduated range of less restrictive measures to be implemented before a primary care provider (PCP) may order a restraint in response to a behavioral crisis. In addition, the facilities, in practice, use a variety of the approaches mentioned by the commenter in teaching de-escalation, developing specific behaviors as part of the positive behavioral support plans (PBSP), and completing extensive debriefings with a psychologist or a board-certified behavior analyst. These approaches are reinforced in the training requirements described in 40 TAC Chapter 3, Subchapter D.

Comment: A commenter asserted that the process for authorizing the use of restraint is unclear throughout the proposed rules. The commenter stated that generally there should be a process involving clinical oversight and the specific order for restraints as well as the assessments that must follow.

Response: The rules specify the various criteria, processes, and procedures for use of restraints. For example, §3.601(c) enumerates situations where restraints may not be used. Section 3.603(b) requires the PCP and other relevant professionals to assess and identify any issues or contraindications for the use of restraints. Section 3.604(b) sets forth conditions that must be met before a PCP may order restraint in response to a behavioral crisis. Section 3.608(a) requires the facility to review the use of restraint to determine whether the application of restraint was justified, the restraint was applied correctly, injuries occurred, or factors exist that, if modified, may prevent the future use of restraint. Section 3.608(e) requires the IDT to review an individual restrained in response to a behavioral crisis or medical or dental intervention at least quarterly to assess progress in changing the circumstances that led to the use of restraint.

Comment: Two commenters suggested modifying the rules, including §3.603, to clarify that a restraint is not a method of contingent behavior therapy. One commenter stated that the Department of Justice and S.B. 41 emphasize not using a restraint in a contingent manner for behavior therapy. This commenter further suggested modifying the rules to clarify that a restraint is an emergency intervention and that a restraint should only be considered an intervention in a behavioral emergency after less intrusive and restrictive techniques have been attempted.

Response: The use of a restraint as a contingent behavioral intervention or as a PBSP is prohibited by these rules. Section 3.601(b) states the three circumstances under which restraint may be used to protect an individual or others from imminent physical injury. In addition, §3.601(c) explicitly prohibits using a restraint on an individual as part of a PBSP. A PBSP is defined in §3.101(48) as "a comprehensive, individualized plan that contains intervention strategies designed to modify the environment, teach or increase adaptive skills, and reduce or prevent the occurrence of target behaviors through interventions that build on an individual's strengths and preferences, without using aversive or punishment contingencies."

Comment: A commenter stated that the time lines provided for restraints are too long and the criteria for release should not be the demonstration of specific behaviors by the individual but the absence of imminent danger of substantial bodily injury or death.

Response: The parameters in §3.601(a) are within the guidelines of 42 CFR §483.450(d), but facilities may use shorter time frames. The rules require individualized criteria for release by relying on behavior that indicates imminent risk of physical injury has abated. This approach is objective and reduces the possibility of staff misjudgment. A description of the behaviors indicating release is appropriate will be in the individual's crisis intervention plan, as defined in §3.101(16).

Comment: A commenter stated that the proposed rules do not include a definition or language about exclusionary time-out. The commenter asked if this means that exclusionary time-out will no longer be used. The commenter further stated that if exclusionary time-out can still be used, the proposed rules need to include information about how and under what circumstances it is authorized.

Response: Exclusionary time-out is defined in 40 TAC §9.203(26) and is not a type of restraint. As these new rules govern the use of restraints, the agency declines to make the suggested changes.

Comment: A commenter states that chemical restraints are prohibited by at least two other state agencies. The commenter states that this lack of uniformity is inconsistent with the objectives of S.B. 325 and the S.B. 325 work group recommendations.

Response: The 2009 Settlement Agreement and 42 CFR §483.450(b)(1)(iv)(C) authorize the use of chemical restraint as a crisis intervention. These new rules allow the use of chemical restraints in response to a behavioral crisis, but only if immediate use of the medication is essential to prevent or mitigate danger from an individual's harmful behavior and the conditions in §3.604(c)(1) - (5) regarding use of a psychotropic medication are met. Additionally, §3.608 includes quality assurance measures designed, in part, to reduce the use of restraints, including chemical restraints. For example, §3.608(c) requires that a pharmacist and psychiatrist conduct a clinical review of each chemical restraint to determine whether the restraint was used in a clinically justified manner, to identify any potential medication-related risks, and to make any applicable recommendations to the IDT. Section 3.608(e) requires the IDT to review an individual restrained in response to a behavioral crisis or medical or dental intervention at least quarterly to assess progress in changing the circumstances that led to the use of restraint. The agency did not make changes in response to the comments.

Comment: Regarding §3.101(6), a commenter requested deletion of the word "safety" from the proposed definition of "behavioral crisis" because the commenter asserts that the term is subjective and difficult to define. The commenter further recommends replacing the word "serious" with "substantial" and replacing the phrase "violence or injury" with "imminent probable death or substantial bodily harm."

Response: The definition of "behavioral crisis" in §3.101(6) is consistent with the definition of "crisis intervention" in the 2009 Settlement Agreement. Training on the behavioral situations that may lead to the use of restraint includes specific examples of situations in which there is imminent harm and serves to clarify safe and unsafe situations and the types of intervention necessary to

restore safety. The agency did not make changes in response to the comments.

Comment: Regarding §3.101(8), a commenter suggested revising the definition of "chemical restraint" by replacing the phrase "managing the individual's behavior" with "preventing imminent probable death or substantial bodily harm." The commenter stated that restraints should never be used to manage behavior, arguing that routine medication is for behavior management. The commenter states that restraints should only be used to prevent imminent death or harm.

Response: The rule's definition of "chemical restraint" is the definition in the 2009 Settlement Agreement. Additionally, under §3.604(c), a psychotropic medication may be used in response to a behavioral crisis, but only if the immediate use of the medication is essential to prevent or mitigate the danger of an individual's harmful behavior and the conditions in §3.604(c)(1) - (5) have been met. Further, routine psychotropic medication is used to treat a diagnosed mental health disorder, not to manage behavior. The agency declines to make the suggested change.

Comment: Regarding §3.101(15), a commenter suggested modifying the definition of "crisis intervention" to add the phrase "after less restrictive measures have been tried and determined to be ineffective or the use of less restrictive measures is feasible" at the end of the definition.

Response: The agency agrees that crisis intervention occurs after less restrictive measures have been determined ineffective or not feasible (as opposed to feasible, as the commenter suggested). The agency has modified the definition to reflect these circumstances.

Comment: Regarding §3.101(16), a commenter suggested modifying the definition of "crisis intervention plan" by replacing "threat of violence or injury" with "physical harm," stating that "threat" is not "imminent harm" and is disallowed by S.B. 41.

Response: The agency notes that S.B. 41 requires rules that ensure that physical or mechanical restraint is not administered unless it is necessary to prevent imminent physical injury. In addition, S.B. 41 requires rules that ensure that such restraint ends once "the imminent risk of physical injury abates." Restraint may be used to prevent imminent physical injury and continue until the risk of injury abates. Physical injury does not have to occur before restraint is used. The definition has been modified to reference an imminent risk of physical injury but not a threat of violence.

Comment: Regarding §3.101(16), a commenter suggested modifying the definition of "crisis intervention plan" by replacing the phrase "a description of the behavioral criteria for releasing the restraint" with the phrase "that the individual must be released when the imminent risk of physical injury abates," stating that S.B. 41 says an individual must be released once imminent risk of physical injury abates.

Response: The agency declines to make the suggested change because behavioral criteria are needed to determine when an individual is no longer at imminent risk of physical injury. In addition, §3.601(a)(5)(C) includes the requirement from S.B. 41 that a mechanical or physical restraint end immediately once the imminent risk of physical injury abates. However, in response to the comment, the agency has amended §3.101(16) to clarify that the behavioral criteria are used to determine when the imminent risk of physical injury abates.

Comment: Regarding §3.101(16), a commenter requested deletion of the word "effectively" when referring to the use of restraint procedures in the definition of "crisis intervention plan." The commenter argued that restraints are considered a failure of treatment and there is insufficient evidence to suggest that restraint is an effective intervention for the short-term management of behavioral crises.

Response: The agency's use of the word "effectively" does not refer to treatment issues. Restraints are not used as a treatment intervention. The use of the word "effectively" relates to staff using restraint to achieve the desired outcome. The agency declines to make the suggested change.

Comment: Regarding §3.101(16), a commenter suggested modifying the definition of "crisis intervention plan" by replacing the word "or" with "and" between "individual" and "LAR."

Response: The agency agrees that the crisis intervention plan may be developed with input from both the individual and the individual's LAR. The definition has been modified as suggested.

Comment: Regarding §3.101(16), a commenter suggested modifying the definition of "crisis intervention plan" by adding the phrase "in preventing or reducing the need for restraints" after the phrase "staff actions to be avoided because they have been ineffective in the past."

Response: The agency agrees that the suggested wording clarifies that the actions to be avoided are those that have been ineffective in preventing or reducing the need for restraints in the past. The definition has been modified as suggested.

Comment: Regarding §3.101(16), a commenter suggested modifying the definition of "crisis intervention plan" by removing the phrase "may be adjusted depending upon the individual's progress in the ISP action plan" from the last sentence, and asked why the plan would be adjusted.

Response: The agency declines to make the requested change. The crisis intervention plan is individualized and it should be adjusted based upon new information derived from responding to behavioral crises.

Comment: Regarding §3.101(16), a commenter requested that the definition of "crisis intervention plan" be expanded to include instructions on how to safely implement a series of interventions that are less restrictive and more effective than the use of restraint. The commenter added that the plan should prioritize less restrictive interventions over the use of restraint and clearly indicate that restraints are only used when all other interventions have failed.

Response: The agency declines to make the requested change because the crisis intervention plan provides instructions to staff on how to manage a behavioral crisis. The instructions on less restrictive interventions to prevent the use of restraint are described in an individual's PBSP or the individual's ISP action plan, which are addressed, in part, in §3.603(e)(1) and (g)(1) - (5).

Comment: Regarding proposed §3.101(33), a commenter stated that it is necessary to define who is part of the IDT and not to just repeat the term in the definition. The commenter recommended changing the definition to "Identified professionals and paraprofessionals with the active participation of the individual, designated representative, LAR, and actively involved person that is responsible for assessing the individual's treatment, training, and habilitation needs and making recommendations

for services based on personal goals and preferences of the individual using a person-directed planning process, including a recommendation on whether or not the individual can be served in a community setting with necessary supports and services and if needed, identify barriers to a community setting and strategies to overcome those identified barriers."

Response: The agency notes that the definition of IDT was not proposed for amendment but agrees that the composition of the team should be clarified. As a result, the agency has listed the persons who are team members in the definition. The portion of the definition addressing the IDT's role in making recommendations regarding services in the community or a facility is not related to restraints. The agency declines to make that suggested change.

Comment: Regarding §3.101(38), a commenter suggested revising the definition of "medical emergency" to remove the phrase "injuries resulting in broken bones," but did not give a reason for the requested deletion.

Response: The agency believes that it is appropriate to include injuries resulting from broken bones as an example of a medical emergency because such injuries require immediate assessment and treatment and could be life threatening. Under §3.607(e), staff must ensure that an individual experiencing a medical emergency while in a restraint is released immediately and that the medical emergency is promptly addressed according to statewide and facility policies and procedures. The agency declines to make the suggested change.

Comment: Regarding §3.101(41), a commenter suggested revising the definition of "medical restraint plan" to remove the word "behavioral" before the word "criteria."

Response: The agency agrees that the criteria for release in a medical restraint plan would not necessarily be related to the individual's behavior. The agency has made the suggested change.

Comment: Regarding §3.101(41), a commenter suggested revising the definition of "medical restraint plan" by adding the sentence "A medical restraint plan must also include a formal desensitization plan designed to eliminate the need for a medical restraint."

Response: The agency did not amend the definition of "medical restraint plan" to include a formal desensitization plan because the medical restraint plan is a set of instructions on how to administer the medical restraint, not a treatment plan. If desensitization is to be considered, it should be in the ISP action plan.

Comment: Regarding §3.101(41), a commenter suggested adding to the definition of "medical restraint plan" that it be developed with meaningful input from the individual or LAR.

Response: The agency agrees that a medical restraint plan is to be developed with meaningful input from the individual and LAR and changed the definition accordingly.

Comment: Regarding §3.101(46), two commenters suggested clarifying or deleting the phrase "response interruption used to interrupt an individual's behavior, using facility approved techniques" in the definition of "physical restraint." One of the commenters stated that the term "response interruption" is not defined in rule or statute and that the definition does not clearly describe the conduct of facility staff or the types of behavior that would give rise to the need for a "response interruption." The other commenter also requested deletion of the phrase "re-

sponse blocking and brief redirection used to interrupt an individual's limbs or body without the use of force so that the occurrence of challenging behavior is prevented." The commenter remarked that these provisions contradict CMS guidelines, including 42 CFR §483.450(b)(1)(iv), which do not allow the use of response blocking or force to prevent challenging behavior.

Response: The agency declines to modify the definition of physical restraint in these rules because the term is consistent with the 2009 Settlement Agreement and does not violate or contradict federal requirements. Response blocking and response interruption are strategies designed to reduce or prevent target behaviors.

Comment: Regarding §3.101(46), a commenter suggested deleting the phrase "or hand holding to escort an individual from one area to another" from the list of items that are not restraints because hand-holding is included in the list of items that are forms of physical restraint and also contradicts CMS guidelines at 42 CFR §483.450(b)(1)(iv).

Response: The agency notes that "resistance" to an escort is critical to determining if hand holding is a restraint. The agency declines to make the requested change but has modified §3.101(46) to clarify that holding an individual's hand to escort the individual is not physical restraint if there is no resistance from the individual.

Comment: Regarding §3.101(52), a commenter requested removal of the phrase "or as soon as possible" in the definition of "prone restraint."

Response: The agency agrees that the explanation of what does not constitute prone restraint should be clarified. Specifically, if an individual shifts to a prone position during an incident of physical restraint, staff should immediately begin to adjust the individual to restore the individual to a standing, sitting, or side-lying position. While it may take a brief period of time to make the adjustment, if the adjustment cannot be initiated immediately, the individual must be released. The agency has modified the definition to make this clarification. In addition, a similar change has been made to the definition of "supine restraint" at §3.101(63).

Comment: Regarding §3.101(54), a commenter suggested replacing the term "restraint" with the term "device" throughout the definition of "protective mechanical restraint for self-injurious behavior." The commenter stated that by using "restraint" in the term, it must end each time the self-injurious behavior abates.

Response: A protective mechanical restraint for self-injurious behavior is not a protective device but a type of mechanical restraint used only for protection from self-injurious behavior. The rules, including the definition in §3.101(54) and the requirements in §§3.601(a), 3.606, and 3.607, adequately address the requirements for removal and replacement of this type of restraint to protect an individual from imminent harm resulting from documented self-injurious behavior. The risk of injury from self-injurious behavior, compared to a behavioral crisis, generally abates more gradually and over a longer period of time, if ever. The behavior creating the risk may not be episodic and may be occurring due to biological influences, such as neurological or genetic factors. For that reason, the criteria procedures and timing for the use and release of a protective mechanical restraint for self-injurious behavior are not the same as those used for a restraint in a behavioral crisis. However, both types of restraints end when the risk of injury abates. The agency declines to make the suggested change, but has clarified the definition by adding that the term does not include protective devices.

Comment: Regarding §3.101(54), a commenter requested addition of the sentence "A protective mechanical restraint for self-injurious behavior must allow greater freedom of mobility than would be possible without the device."

Response: The purpose of these devices is to restrict the person's mobility to protect the person from self-injurious bodily harm. The agency declined to make the suggested change.

Comment: Regarding §3.101(55), a commenter suggested adding that a protective mechanical restraint plan for self-injurious behavior is developed with meaningful input from the individual or LAR.

Response: The agency agrees that a protective mechanical restraint plan for self-injurious behavior is to be developed with meaningful input from the individual and LAR and has changed the definition accordingly.

Comment: Regarding §3.101(55), a commenter requested adding that a protective mechanical restraint plan for self-injurious behavior must include interventions to reduce or eliminate the need for the restraint.

Response: The definition includes requirements to identify any low-risk situations when a restraint may be safely removed, what staff should do during those situations to continue to protect the individual from harm, and adjustments in staff instructions as progress is made for gradually eliminating the use of the restraints, including details on any specialized staff training and reporting. Also, §3.607(d) requires a fading schedule designed to phase out the use of mechanical restraint which must be reviewed by the IDT, including the PCP and appropriate therapists, each month and adjusted to permit the maximum safe time out of restraints. The agency declined to make the suggested change.

Comment: Regarding §3.101(55), a commenter inquired who develops a protective mechanical restraint plan for self-injurious behavior.

Response: Behavioral health services staff develop the plan in cooperation with the IDT. No changes were made in response to this comment.

Comment: Regarding §3.101(59), a commenter suggested revising the definition of "restraint monitor" to specify that an employee must receive competency-based training and to add that the designated facility employee has "demonstrated proficiency in the application and assessment of restraints."

Response: The agency agrees that restraint monitors should receive competency-based training and demonstrate proficiency related to restraints. The agency has made the requested changes.

Comment: Regarding §3.601(a)(4)(A), now (5)(A), a commenter requested replacing the phrase "the documented danger of" with "the need for protective mechanical restraint for."

Response: The phrase "documented danger of" describes the purpose for applying a protective mechanical restraint for self-injurious behavior to an individual. The agency declined to make the suggested change.

Comment: Regarding §3.601(a)(5), now (a)(6), a commenter requested the addition of the word "privacy" between the words "dignity" and "and."

Response: The agency agrees that staff must attempt to provide an environment that safeguards an individual's privacy. The agency has made the requested change.

Comment: Regarding §3.601(a)(7), now (a)(8), a commenter requested modifying the provision to specifically describe appropriate responses to restraint-related injuries or set up a process for determining the appropriate responses to restraint-related injuries. The commenter explained that a more detailed description will ensure adequate treatment for individuals and provide clear procedures for facilities and staff.

Response: The agency agrees and has modified §3.601(a)(7), now (a)(8), to specifically state that an immediate release from restraint and checks by medical staff are appropriate responses to signs or symptoms of restraint-related injuries. In addition, the agency notes that §3.607(e) addresses an individual experiencing a medical emergency while in restraint.

Comment: Regarding §3.601(a)(12), now (a)(13), a commenter requested modifying the paragraph to provide detailed criteria for extending the authorization of physical restraints and referenced Texas Department of State Health Services (DSHS) rule 25 TAC §415.263 to serve as a guideline for making the requested change.

Response: The agency declines to make the suggested change, noting that these new rules contain many requirements related to the circumstances and procedures for properly administering restraint, including the time limit for an authorization to use or extend physical restraints in response to a behavioral crisis in §3.601(a)(12), now (a)(13).

Comment: Regarding §3.601(a)(12), now (a)(13), two commenters stated that allowing authorizations for up to 12 hours is longer than is necessary or appropriate and requested shortening the maximum time. One of the commenters raised concerns about medical risks to both the individual being held and to the staff involved in the restraint and recommended that DADS consult with other entities to learn how much these entities have reduced the maximum time frames for the length of a manual hold. The other commenter requested that the maximum time be changed to six hours.

Response: The 12-hour maximum is consistent with CMS regulations at 42 CFR §483.450(d)(2)(i). However, this 12-hour period is not intended to be the duration of the restraint. As stated in §3.601(a)(4)(B), now (a)(5)(B), a mechanical or physical restraint must be used for the shortest period of time necessary. The agency declined to make the suggested change.

Comment: Regarding §3.601(b)(3), a commenter requested deleting the provision in its entirety, arguing that the rule suggests any restraint can be used any time there is documented self-injurious behavior.

Response: The agency declined to delete the provision, but added the phrase "for which intensive, one-to-one supervision and treatment have not sufficiently reduced the risk of self-injury" to address the commenter's concern that restraint could be used any time there is documented self-injurious behavior.

Comment: Regarding §3.601(c)(1), a commenter suggested replacing the phrase "physical injury to the individual or another person" with "probable death or substantial bodily harm if no intervention occurs."

Response: The prohibition language in §3.601(c)(1) is consistent with the terminology used in S.B. 41 and the definition of crisis intervention in the 2009 Settlement Agreement. The agency declined to make the suggested change.

Comment: Regarding §3.601(c)(2), a commenter suggested adding "or for convenience due to lack of sufficient staffing" to purposes for which restraint may not be used.

Response: The agency states that restraint may not be used for the convenience of staff or other persons, regardless of whether it is the result of insufficient staffing or some other reason. The agency declines to make the suggested change because it does not want to limit the prohibition to the circumstances of having insufficient staff.

Comment: Regarding §3.603(b), a commenter suggested adding that meaningful input from the individual or LAR must be included when identifying issues or contraindications for the use of restraint.

Response: The agency agrees and has amended §3.603(b) to specifically recognize that the individual and LAR are part of the IDT that must assess and identify the issues or contraindications related to the use of restraint.

Comment: Regarding §3.603(b)(1), a commenter suggested amending the provision to add "behavioral, psychiatric," between the words "physical" and "or."

Response: The agency agrees and has made the requested change to include behavioral and psychiatric conditions in the list of risks that should be considered related to the use of restraint.

Comment: Regarding §3.603, a commenter stated that an annual review of the ISP is insufficient considering the seriousness of instances involving imminent risk of harm. The commenter recognized that the proposed rule allows for more frequent reviews as necessary, but argued that too frequently the minimums become maximums.

Response: Section 3.603(h) requires an IDT to review, assess, and revise an ISP action plan at least annually and more frequently as necessary. Section 3.603(h) also requires an IDT to review, at least quarterly and more frequently as necessary, an individual who was restrained for a behavioral crisis or for whom medical restraint was used. The agency believes these provisions sufficiently address the frequency of reviews related to restraint and declines to make the suggested change.

Comment: Regarding §3.603, a commenter stated that positive behavior supports focus on behavior as a means of communicating, and the goal is to better understand what is being communicated, what need is being met by the behavior, and to assist the individual in learning more adaptive ways of getting the need met. The commenter asserted that a positive behavior supports approach should identify challenging behaviors and provide staff a range of interventions to use to interrupt those behaviors and help identify appropriate replacement behaviors. The commenter further stated that the goal of the treatment team should also be to teach the individual self-control rather than repeatedly using external control which negatively impacts the person's ability to live independently.

Response: The agency notes that the definition of a PBSP addresses several of these points, but because the rules govern the use of restraints, they are not the appropriate rules to address positive behavior support concepts. No changes were made to the rules in response to this comment.

Comment: Regarding §3.603(e) - (i), a commenter expressed concern that by clearly directing staff in use of restraints in the ISP, staff may misinterpret this direction and use restraints while neglecting to consider less intrusive ways of intervening.

Response: Behavioral health services staff will provide training on the positive behavior support plan, which includes less intrusive ways of intervening and avoiding restraints, to reduce the chance of staff misinterpretations. No changes were made to the rules in response to this comment.

Comment: A commenter suggested replacing the word "and" with "or" between §3.603(f)(5) and §3.603(f)(6), stating that otherwise all criteria would need to be met in order to develop or revise an IDT plan.

Response: The agency agrees and has made the requested change.

Comment: Regarding §3.603(g)(8), a commenter stated that the requirements for obtaining informed consent and description of the information that must be provided to the individual before informed consent can be obtained are unclear under the proposed rule or any other rule in 40 TAC Part 1. The commenter requested both a definition of "informed consent" and a description of the information that must be provided to the individual before informed consent can be obtained. The commenter pointed to DSHS rules in 25 TAC §414.403 and §414.404 as a model for making the suggested changes.

Response: The agency agrees that clarification is needed and has replaced the term "informed consent" with the term "legally adequate consent." The term "legally adequate consent" is defined in 40 TAC §3.101(34) to mean consent received from a person who has legal status that meets the statutory requirements for comprehension of information and voluntariness as specified in Texas Health and Safety Code §591.006.

Comment: Regarding §3.604(b), a commenter suggested adding "the individual's behavior constitutes an imminent safety situation that places the individual or others at substantial risk of imminent probable death or substantial bodily harm if no intervention occurs" to conditions that must be met before a PCP may order a restraint in response to a behavioral crisis.

Response: One of the conditions for a PCP to order a restraint in response to a behavioral crisis is that the individual's behavior must constitute such a crisis. The term "behavioral crisis" has been used instead of repeating its definition in this provision. The change suggested by the commenter is not consistent with that definition. The agency declines to make the suggested change.

Comment: Regarding §3.604(b)(4), a commenter suggested deleting the provision, arguing that mittens or helmets would never be appropriate for use during a behavioral crisis. The commenter also stated that the text in proposed §3.604(b)(4)(B) suggests that mittens or helmets can be included in an ISP if the IDT recommends it, which is not appropriate.

Response: An individual who is self-injurious may have a behavioral crisis in which a facility has to consider a mechanical restraint. Crisis intervention using physical restraint should be considered, but if physical harm cannot be prevented by use of physical restraint or if the physical restraint results in an escalation of behavior, then a mechanical restraint may be needed. The agency did not make the requested change to delete §3.604(b)(4)(B).

The agency agrees, however, that a correction is needed in §3.604(b)(4) and (5) and modified this provision to allow a helmet, mittens with ties, wristlets, or other mechanical restraints only if their use is specified in an approved crisis intervention plan or is approved by the individual's psychologist or board-certified behavior analyst (BCBA) or the psychologist

or BCBA on call, the administrator on duty, and the director of psychology or behavioral services. In the latter situation, subsection (c) requires the chairperson of the facility's Human Rights Committee to review the use of the mechanical restraint as soon as possible, but within 24 hours, after the initiation of the restraint. It is not sufficient for the use of the mechanical restraint to be specified in an ISP.

In addition, the provision requiring a facility's human rights committee to review a mechanical restraint used in a behavioral crisis and lasting more than 24 hours has been deleted in light of the requirement that the chairperson review a mechanical restraint use in a behavioral crisis but not specified in a crisis intervention plan within 24 hours of its initiation.

Comment: Regarding §3.604(b)(5), a commenter requested amending the provision to add that if a mechanical restraint initiated in response to a behavioral crisis lasts 12 hours, then the Assistant Commissioner for the State Supported Living Centers and Psychological/Behavioral Services Coordinator are immediately informed. The commenter further requested amending the rule to state that only the Human Rights Committee (HRC) in collaboration with the Associate Commissioner and Psychological/Behavioral Services Coordinator has authority to approve further use of the mechanical restraint.

Response: The agency has replaced §3.604(b)(5) with the requirement in subsection (c) that the chairperson review a mechanical restraint used in a behavioral crisis but not specified in a crisis intervention plan within 24 hours of its initiation.

Comment: Regarding §3.606(b)(1) - (7), a commenter asserted that these provisions should be part of a protective device plan and suggested changes to §3.606(b) and §3.606(b)(1) consistent with that approach.

Response: A protective mechanical restraint for self-injurious behavior is not a protective device, but a type of mechanical restraint used only for protection from self-injurious behavior. The agency declined to make the suggested change and has clarified the definition in §3.101(54) to add that the term does not include protective devices.

Comment: Regarding §3.606(b)(3), a commenter suggested revising the paragraph to replace the phrase "considered developing" with the phrase "considered, developed, and implemented."

Response: The agency agrees that the IDT is responsible for developing other clinical plans, as applicable, to reduce the need for protective mechanical restraint. The agency has modified the wording of the paragraph to reflect that responsibility.

Comment: Regarding §3.606(b)(4), a commenter suggested revising the paragraph to read "a PBSP has been completed or revised based on a structural and functional assessment, has been implemented..." rather than "a PBSP, based on a structural and functional assessment, has been implemented...."

Response: The agency agrees that a revision to an existing PBSP may occur and has made the suggested change.

Comment: Regarding §3.608(b), a commenter requested adding the word "each" before the word "restraint."

Response: The agency agrees that a review must be conducted on each instance of restraint and has made the requested change.

Comment: Regarding §3.608(b) and (c), a commenter requested that the rule include a specific time period for the



reviews described in those subsections to allow for the development of relevant information.

Response: The agency has modified the subsections to provide that the reviews must be done in a timely manner but specific time periods have not been added because the reviewers must have the flexibility to conduct a thorough review according to the individual circumstances of each restraint.

Comment: Regarding §3.608(f), a commenter stated that proposed rule should include language on the statewide policy regarding the use of restraints, thereby allowing facilities to better identify important issues, emerging trends, and appropriate responses that should be tracked and analyzed.

Response: As stated in §3.608(f), specific procedures for reporting, tracking, trending, and analyzing restraint data will be implemented in accordance with a statewide policy, but the agency declines to include the specific procedures for processing restraint data in these rules.

The agency has added a requirement to §3.601(a) that a licensed nurse assess an individual who has been restrained, determine if the individual's vital signs are stable, and document the individual's mental status, as soon as possible but within 30 minutes after restraint is initiated. Staff must continuously monitor the individual until the licensed nurse arrives. This has been added to help ensure the safety of a person who has been restrained.

The agency has deleted the requirement that was proposed in §3.607(b) that a licensed nurse assess an individual after being released from a restraint because the nurse should have assessed the individual within 30 minutes of the restraint being initiated. The nurse will use professional judgment to decide the level of monitoring or care the individual needs in connection with the restraint after the assessment.

## SUBCHAPTER A. DEFINITIONS

### 40 TAC §3.101

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

#### §3.101. Definitions.

The following words and terms, when used in this chapter (relating to Administrative Responsibilities of State Facilities), have the following meanings, unless the context clearly indicates otherwise:

(1) Administrative death review--An administrative, quality-assurance activity related to the death of an individual to identify non-clinical problems requiring correction and opportunities to improve the quality of care at a facility.

(2) Allegation--A report by a person suspecting or having knowledge that an individual has been or is in a state of abuse, neglect, or exploitation as defined in this chapter.

(3) Alleged offender--An individual who was committed or transferred to a facility:

(A) under Code of Criminal Procedure, Chapters 46B or 46C, as a result of being charged with or convicted of a criminal offense; or

(B) under Family Code, Chapter 55, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(4) Applicant--A person who has applied to be an employee, volunteer, or unpaid professional intern.

(5) Attending physician--The physician who has primary responsibility for the treatment and care of an individual.

(6) Behavioral crisis--An imminent safety situation that places an individual or others at serious risk of violence or injury if no intervention occurs.

(7) CANRS--The client abuse and neglect reporting system maintained by DADS Consumer Rights and Services.

(8) Chemical restraint--Any drug prescribed or administered to sedate an individual or to temporarily restrict an individual's freedom of movement for the purpose of managing the individual's behavior.

(9) Child--An individual less than 18 years of age who is not and has not been married and who has not had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.

(10) Clinical death review--A clinical, quality-assurance, peer review activity related to the death of an individual and conducted in accordance with statutes that authorize peer review in Texas to identify clinical problems requiring correction and opportunities to improve the quality of care at a facility.

(11) Clinical practice--The demonstration of professional competence in nursing, dental, pharmacy, or medical practice as described in the relevant chapter of the Texas Occupations Code.

(12) Confirmed--Term used to describe an allegation that DFPS determines is supported by a preponderance of the evidence.

(13) Contractor--A person who contracts with a facility to provide services to an individual, including an independent school district that provides educational services at the facility.

(14) Conviction--The adjudication of guilt for a criminal offense.

(15) Crisis intervention--The use of interventions, including physical, mechanical, or chemical restraint, in a behavioral crisis, after less restrictive measures have been determined to be ineffective or not feasible.

(16) Crisis intervention plan--A component of the individual support plan (ISP) action plan that provides instructions for staff on how to effectively and safely use restraint procedures, as long as they are needed to prevent imminent physical injury in a behavioral crisis when less restrictive prevention or de-escalation procedures have failed and the individual's behavior continues to present an imminent risk of physical injury. The plan is developed with input from the PCP and direct support professionals familiar with the individual and the individual and LAR and includes a description of how the individual behaves during a behavioral crisis, along with information about the types of restraints that have been most effective with the individual, staff actions to be avoided because they have been ineffective in the past in preventing or reducing the need for restraints, the restraint's maximum duration, a description of the behavioral criteria for determining when the imminent risk of physical injury abates, and reporting requirements. A crisis intervention plan is not considered a therapeutic intervention.

It is implemented only to ensure that restraint procedures are carried out effectively and safely and may be adjusted depending upon the individual's progress in the ISP action plan.

(17) DADS--Department of Aging and Disability Services.

(18) Deferred adjudication--Has the meaning given to "community supervision" in Texas Code of Criminal Procedure, §42.12, Section 2.

(19) Designated representative--A person designated by an individual or an individual's LAR to be a spokesperson or advocate for the individual.

(20) DFPS--Department of Family and Protective Services.

(21) Director--The director of a facility or the director's designee.

(22) Direct support professional--An unlicensed employee who directly provides services to an individual.

(23) Employee--A person employed by DADS whose assigned duty station is at a facility.

(24) Facility--A state supported living center or the ICF/IID component of the Rio Grande State Center.

(25) Family member--An individual's parent, spouse, children, or siblings.

(26) Forensic facility--A facility designated under Texas Health and Safety Code (THSC), §555.002(a) for the care of high-risk alleged offenders.

(27) Guardian--An individual appointed and qualified as a guardian of the person under the Texas Probate Code, Chapter XII.

(28) High-risk alleged offender--An alleged offender who has been determined to be at risk of inflicting substantial physical harm to another person in accordance with THSC §555.003.

(29) Inconclusive--Term used to describe an allegation leading to no conclusion or definite result by DFPS due to lack of witnesses or other relevant evidence.

(30) Independent mortality review organization--An independent organization designated in accordance with Texas Government Code, Chapter 531, Subchapter U, to review the death of an individual.

(31) Individual--A person with a developmental disability receiving services from a facility.

(32) Individual support plan (ISP)--An integrated, coherent, person-directed plan that reflects an individual's preferences, strengths, needs, and personal vision, as well as the protections, supports, and services the individual will receive to accomplish identified goals and objectives.

(33) Interdisciplinary team (IDT)--A team consisting of an individual, the individual's legally authorized representative (LAR) and qualified developmental disability professional, other professionals dictated by the individual's strengths, preferences, and needs, and staff who regularly and directly provide services and supports to the individual. The team is responsible for assessing the individual's treatment, training, and habilitation needs and making recommendations for services based on the personal goals and preferences of the individual using a person-directed planning process, including recommendations on whether the individual is best served in a facility or community setting.

(34) Legally adequate consent--Consent received from a person who has legal status that meets the statutory requirements for comprehension of information and voluntariness as specified in THSC §591.006.

(35) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual, including a parent, guardian, or managing conservator of a minor individual, or a guardian of an adult individual.

(36) Life-sustaining medical treatment--Treatment that, based on reasonable medical judgment, sustains the life of an individual and without which the individual will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered necessary to provide comfort care or any other medical care provided to alleviate an individual's pain.

(37) Mechanical restraint--Any device attached or adjacent to an individual's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. The term does not include a protective device.

(38) Medical emergency--Any illness or injury that requires immediate assessment and treatment by medical staff for conditions considered to be life threatening, including, but not limited to, respiratory or cardiac arrest, choking, extreme difficulty in breathing, status epilepticus, allergic reaction to an insect sting, snake bite, extreme pain in the chest or abdomen, poisoning, hemorrhage, loss of consciousness, sudden loss of function of a body part, injuries resulting in broken bones, possible neck or back injuries, or severe burns.

(39) Medical intervention--Treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician assistant, or advanced practice nurse in accordance with general acceptable clinical practice.

(40) Medical restraint--A health-related protection prescribed by a primary care provider (PCP) or dentist that is necessary for the conduct of a specific medical or dental procedure, or is only necessary for protection during the time that a medical or dental condition exists, for the purpose of preventing an individual from inhibiting or undoing medical or dental treatment. Medical restraint includes pre-treatment sedation.

(41) Medical restraint plan--A component of the ISP action plan that provides instructions for staff on how to effectively and safely carry out medical restraint procedures. The plan is developed with input from the PCP or dentist and meaningful input from the individual and LAR and includes a description of the individual's behaviors that do not allow for a safe and effective implementation of needed medical or dental procedures, information about the types of restraints that have been most effective with the individual, a description of the criteria for releasing the restraint, and reporting requirements. A medical restraint plan is not considered a therapeutic intervention and may be adjusted depending upon the individual's progress in the ISP action plan.

(42) Mental health services provider--Has the meaning assigned in the Texas Civil Practice and Remedies Code, Chapter 81.

(43) Peer review--A review of clinical or professional practice of a doctor, pharmacist, licensed vocational nurse, or registered nurse conducted by his or her professional peers.

(44) Perpetrator--A person who has committed an act of abuse, neglect, or exploitation.

(45) Person--Includes a corporation, organization, governmental subdivision or agency, or any other legal entity.

(46) Physical restraint--Any manual method that restricts freedom of movement or normal access to one's body, including hand or arm holding to escort an individual over his or her resistance to being escorted. Physical restraint does not include brief and limited use of physical guidance, positioning, or prompting techniques used to redirect an individual or assist, support, or protect the individual during a functional therapeutic or physical exercise activity; response blocking and brief redirection used to interrupt an individual's limbs or body without the use of force so that the occurrence of challenging behavior is prevented; holding an individual, without the use of force, to calm or comfort, or hand holding to escort an individual from one area to another without resistance from the individual; and response interruption used to interrupt an individual's behavior, using facility-approved techniques.

(47) Physician on duty--The physician designated by the facility's medical director to provide medical care or respond to emergencies outside regular working hours.

(48) Positive behavior support plan (PBSP)--A comprehensive, individualized plan that contains intervention strategies designed to modify the environment, teach or increase adaptive skills, and reduce or prevent the occurrence of target behaviors through interventions that build on an individual's strengths and preferences, without using aversive or punishment contingencies.

(49) Preponderance of the evidence--The greater weight of evidence, or evidence that is more credible and convincing to the mind.

(50) Primary care provider (PCP)--A physician, advanced practice nurse, or physician assistant who provides primary care to a defined population of patients. The PCP is involved in health promotion, disease prevention, health maintenance, and diagnosis and treatment of acute and chronic illnesses.

(51) Primary contact--The person designated as the primary contact of an alleged victim of abuse, neglect, or exploitation, if the alleged victim is an adult with an intellectual disability who is unable to authorize the disclosure of protected health information and does not have a guardian.

(52) Prone restraint--Any physical or mechanical restraint that places the individual in a face-down position. Prone restraint does not include when an individual is placed in a face-down position as a necessary part of a medical intervention, or when an individual moves into a prone position during an incident of physical restraint, if staff immediately begin an adjustment to restore the individual to a standing, sitting, or side-lying position or, if that is not possible, immediately release the person. Prone restraint is prohibited.

(53) Protection and advocacy organization--The protection and advocacy agent for Texas designated in accordance with the Code of Federal Regulations, Title 45, §1386.20.

(54) Protective mechanical restraint for self-injurious behavior--A type of mechanical restraint applied before an individual engages in self-injurious behavior, for the purpose of preventing or mitigating the danger of the self-injurious behavior because there is evidence that the targeted behavior can result in serious self-injury when it occurs and intensive, one-to-one supervision and treatment have not yet reduced the danger of self-injury. Examples include, but are not limited to, protective head gear for head banging, arm splints for eye gouging, or mittens for hand-biting. The term does not include medical restraints or protective devices.

(55) Protective mechanical restraint plan for self-injurious behavior--A component of the ISP action plan that provides instructions for staff on how to effectively and safely apply the protective mechanical restraint that is used to prevent or mitigate the effects of serious self-injurious behavior. The plan is developed with input from direct support professionals familiar with the individual and meaningful input from the individual and LAR, and includes a description of the individual's self-injurious behaviors, the type of restraint to be used, the restraint's maximum duration, and the circumstances to apply and remove the restraint. The plan must identify any low-risk situations when the restraint may be safely removed, what staff should do during those situations to continue to protect the individual from harm, and adjustments in staff instructions as progress is made for gradually eliminating the use of the restraints, including details on any specialized staff training and reporting. The plan is not considered a therapeutic intervention and is adjusted depending upon the individual's progress in the ISP action plan and an evaluation by the PCP that the individual's behavior is no longer at the dangerous level that is producing serious self-injury.

(56) Registered nurse--A nurse licensed by the Texas Board of Nursing to practice professional nursing in Texas.

(57) Registries--

(A) the Nurse Aide Registry maintained by DADS in accordance with §94.10 of this title (relating to Registry, Findings, and Inquiries); and

(B) the Employee Misconduct Registry maintained by DADS in accordance with Chapter 93 of this title (relating to Employee Misconduct Registry (EMR)).

(58) Reporter--A person who reports an allegation of abuse, neglect, or exploitation.

(59) Restraint monitor--A designated facility employee who has received competency-based training and demonstrated proficiency in the application and assessment of restraints, who has experience working directly with individuals with developmental disabilities, and who is trained to conduct a face-to-face assessment of the individual who was restrained and the staff involved in the restraint to review the application and results of the restraint.

(60) Retaliation--An action intended to inflict emotional or physical harm or inconvenience on a person including harassment, disciplinary action, discrimination, reprimand, threat, and criticism.

(61) SSLC--A state supported living center.

(62) State office mortality review--A quality assurance activity to review data related to the death of an individual to identify trends, best practices, training needs, policy changes, or facility or systemic issues that need to be addressed to improve services at facilities.

(63) Supine restraint--Any physical or mechanical restraint that places the individual on his or her back. Supine restraint does not include when an individual is placed in a supine position as a necessary part of a medical restraint, or when an individual moves into a supine position during an incident of physical restraint, if staff immediately begin an adjustment to restore the individual to a standing, sitting, or side-lying position or, if that is not possible, immediately release the person. Supine restraint does not include persons who have freedom of movement in a hospital bed or dental chair that is at a reclined position. Supine restraint is prohibited.

(64) Unconfirmed--Term used to describe an allegation that DFPS determines is not supported by the preponderance of evidence.

(65) Unfounded--Term used to describe an allegation that DFPS determines is spurious or patently without factual basis.

(66) Unusual incident--An event or situation that seriously threatens the health, safety, or life of an individual.

(67) Volunteer--A person who is not part of a visiting group, who has active, direct contact with an individual, and who does not receive compensation from DADS other than reimbursement for actual expenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-4466



## SUBCHAPTER F. RESTRAINTS

### 40 TAC §§3.601 - 3.608

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

#### *§3.601. General Provisions.*

##### (a) Expectations.

(1) A facility must implement and operationalize statewide policy addressing the use of restraint.

(2) At least one person trained as a restraint monitor must be on duty at all times to respond to the initiation of restraint procedures in a behavioral crisis, immediately if possible but in no case in more than 15 minutes. If data suggests a high number of incidents of restraint, additional restraint monitors may be required.

(3) If an individual is in restraint at the time of shift change, staff must communicate and coordinate between shifts to provide continuity of care.

(4) A licensed nurse must assess, for injuries and other negative health effects, an individual who has been restrained; determine if the individual's vital signs are stable; and document the individual's mental status as soon as possible but within 30 minutes after the initiation of restraint. Staff must continuously monitor the individual until the licensed nurse arrives.

(5) A mechanical or physical restraint administered to an individual must:

(A) be the least restrictive restraint effective to prevent imminent physical harm in a behavioral crisis, or to safely and effec-

tively implement a medical or dental procedure, or to prevent or mitigate the documented danger of self-injurious behavior;

(B) be used for the shortest period of time necessary to prevent imminent physical injury, to safely and effectively implement a medical or dental procedure, or to prevent or mitigate the documented danger of self-injurious behavior;

(C) end immediately once the imminent risk of physical injury abates;

(D) be applied with the minimum amount of force or pressure necessary to prevent harm to the individual and others; and

(E) be used in the safest, least restrictive, most humane, and most respectful manner possible.

(6) Staff must attempt to provide an environment that safeguards the individual's personal dignity, privacy, and well-being while ensuring safety.

(7) Staff must provide continuous one-to-one supervision to individuals while in restraint. Individuals receiving medical restraints must receive supervision as ordered by the PCP or dentist in accordance with facility procedures. The director may approve an alternate level of supervision based on the IDT's clinical justification and recommendation.

(8) Staff must respond appropriately to signs or symptoms of restraint-related injuries or distress, including an immediate release from restraint and checks by medical staff.

(9) If an emergency evacuation or an evacuation drill occurs while an individual is in restraint, staff must respond as described in the facility's policies and procedures to ensure the individual's safety.

(10) Staff must allow an individual who has been released from restraint time to recover and return to regular activities, including the opportunity to relax and exercise restrained limbs, to drink fluids, to toilet, to complete a snack or meal, and to receive prescribed medications.

(11) Staff must take all necessary steps to avoid causing undue physical discomfort, harm, or pain to the individual while initiating and implementing restraint.

(12) A facility must obtain legally adequate consent for a crisis intervention plan, medical restraint plan, or protective mechanical restraint plan for self-injurious behavior. A plan must be reviewed by the Behavior Support Committee and the facility director and approved by the Human Rights Committee before implementation.

(13) An authorization to use or extend physical restraints in response to a behavioral crisis may be in effect no longer than 12 consecutive hours.

(b) Allowed uses. Restraints may only be used to protect an individual or others from imminent physical injury resulting from:

(1) a behavioral crisis;

(2) a medical or dental procedure; or

(3) documented self-injurious behavior for which intensive, one-to-one supervision and treatment have not sufficiently reduced the risk of self-injury.

##### (c) Prohibitions.

(1) A restraint may not be used on an individual unless the restraint is necessary to prevent imminent physical injury to the individual or another person.

(2) A restraint may not be used for punishment, disciplinary purposes, retaliation, retribution, or convenience or as a substitute for treatment or habilitation.

(3) A restraint may not be used on an individual as part of a positive behavior support plan.

(4) Prone or supine restraint may not be used.

(5) A restraint may not be used if it:

(A) secures the individual to a stationary object while he or she is in a standing position;

(B) obstructs the individual's airway, including the placement of anything in, on, or over his or her mouth or nose;

(C) impairs the individual's breathing by putting pressure on his or her torso;

(D) interferes with the individual's ability to communicate;

(E) extends muscle groups away from each other;

(F) uses hyperextension of joints;

(G) uses pressure points or pain; or

(H) is prohibited by the individual's medical orders or ISP or is medically contraindicated.

(6) A standing order for restraint may not be used.

### §3.603. *Evaluation and Assessment.*

(a) The IDT must develop and implement person-centered proactive supports, training, and treatment with the goal of making the use of restraints unnecessary.

(b) When evidence indicates that the individual's behaviors result in a behavioral crisis or sustained self-injury or make it difficult to provide needed medical or dental care, the IDT, including the individual and LAR, with the involvement of a PCP and other relevant professional staff, must assess and identify any issues or contraindications for the use of restraint, including:

(1) any physical, behavioral, psychiatric, or medical conditions that constitute a risk; and

(2) any considerations in the use of restraint due to the individual's communication level, cognitive functioning level, height, weight, emotional condition (including whether the individual has a history of having been physically or sexually abused), and age.

(c) The IDT must ensure that a PCP reviews and updates, as necessary in response to changes in condition and at IDT meetings, but at least annually, any conditions, factors, or limitations on specific physical techniques, drugs, or mechanical devices used for restraint.

(d) For individuals participating in a program outside the facility, the IDT must coordinate with staff from the outside program to assess and develop interventions consistent with the ISP and any action plans and invite staff from the outside program to participate in IDT meetings at which interventions are discussed.

(e) An ISP action plan must:

(1) be developed to decrease and ultimately eliminate the use of restraint for the individual, with consideration of protection from harm and safety issues;

(2) include an interdisciplinary analysis that identifies the circumstances that contribute to causing the dangerous behaviors that result in the use of restraint;

(3) identify actions, data collection, and the responsible persons for implementing the actions;

(4) address a broad range of changes, which may include changing living arrangements, implementing calming procedures, and incorporating preferences in programs;

(5) include a PBSP and other therapeutic plans, as applicable; and

(6) contain individualized instructions to direct support professionals in the safe and effective use of restraint procedures.

(f) A facility must develop or revise an interdisciplinary ISP action plan in response to significant events, including but not limited to, the following:

(1) more than three behavioral crises in a 30-day rolling period have required the use of restraints;

(2) restraint use has not decreased over time and may be likely to continue at a stable rate unless an action plan is developed;

(3) the individual's characteristics require that standard restraint procedures be adapted to meet his or her needs;

(4) a pattern of injuries to the individual or others is observed as restraint procedures are carried out;

(5) an individual has sustained, self-injurious behavior, and supervision and treatment have not been successful in reducing harm; or

(6) an individual's behavior is presenting a risk to medical or dental treatment or to healing.

(g) A facility must develop and implement an ISP action plan by:

(1) reviewing the individual's relevant adaptive skills and biological, medical, and psychosocial factors;

(2) reviewing possible contributing environmental conditions;

(3) completing or revising structural and functional assessments of the behavior leading to use of restraint;

(4) developing or revising a PBSP based on the structural and functional assessments of the behavior leading to the use of restraint that identifies the individual's particular strengths, specifies the behavior to be addressed, prescribes alternative, positive adaptive behaviors to be taught or strengthened to replace the dangerous behavior that requires the use of restraint, and describes prevention procedures to be followed as the individual's behavior indicates an escalation of behaviors that are dangerous and likely to result in restraint;

(5) as applicable, developing or revising other programs to reduce or eliminate the use of restraint that are not part of the PBSP, such as treatment or strategies to minimize or eliminate the need for medical restraints;

(6) as applicable, developing or revising a crisis intervention plan or medical restraint plan, including staff instructions on how to safely and appropriately use a recommended restraint procedure with a specific individual, any changes in the type of restraint used, the maximum duration of the restraint, and the criteria for terminating the restraint;

(7) as applicable, developing or revising a protective mechanical restraint plan for self-injurious behavior, including procedures for gradually increasing the time the individual is able to stay safe but not be in restraints and any changes in the type of restraint used; and

(8) specifying the persons responsible for activities, including obtaining legally adequate consent from the individual or LAR before implementing the plan, providing required staff training, monitoring activities, evaluating effectiveness, and ensuring any necessary reviews by the Human Rights Committee.

(h) The IDT must review, assess, and revise an ISP action plan at least annually and more frequently as necessary. The IDT must review, at least quarterly and more frequently as necessary, an individual who was restrained for a behavioral crisis or for whom medical restraint was used. The IDT must review a protective mechanical restraint plan for self-injurious behavior at least monthly and more frequently as necessary.

(i) The IDT may consult with a facility discipline director, state office discipline coordinator, or outside consultant to explore alternative treatment strategies.

#### *§3.604. Imminent Harm Resulting from a Behavioral Crisis.*

(a) Only staff who have successfully completed competency-based training on the use of restraints may implement restraint procedures. Staff who implement restraint procedures must also complete training on person-specific instructions and other measures regarding restraints contained in an individual's crisis intervention plan or other plan.

(b) The following conditions must be met before a PCP may order a restraint in response to a behavioral crisis:

(1) the individual's behavior constitutes a behavioral crisis;

(2) if no PBSP, desensitization plan, or other preventive measures are in place, staff have considered the level of imminent risk of violence or injury and have applied a graduated range of less-restrictive approved procedures as safety permits and the measures have not reduced the risk of imminent physical harm to the individual or others;

(3) if a PBSP, desensitization plan, or other preventive measures are in place, the individualized procedures for prevention, de-escalation and a graduated range of less restrictive measures have been followed, as safety permits, but have not reduced the risk of imminent physical harm to the individual or others; and

(4) if a helmet, mittens with ties, wristlets, or other mechanical restraints will be used to prevent self-injury in a behavioral crisis:

(A) an approved crisis intervention plan allowing the use of the mechanical restraint must be in place; or

(B) the use of the mechanical restraint must be approved by the individual's psychologist or board certified behavior analyst (BCBA) or the psychologist or BCBA on call, the administrator on duty, and the director of psychology or behavioral services.

(c) If a mechanical restraint is used in accordance with subsection (b)(4)(B) of this section, its use must be reviewed by the chairperson of the facility's human rights committee as soon as possible but within 24 hours after initiation of the restraint.

(d) A psychotropic medication may be ordered as a chemical restraint in response to a behavioral crisis, but only if immediate use of the medication is essential to prevent or mitigate the danger of the individual's harmful behavior and the following conditions have been met:

(1) the individual is experiencing a behavioral crisis;

(2) a graduated range of less restrictive alternatives to stop the behavior and protect the individual and others has been attempted,

as safety permits, but has not reduced the risk of imminent physical harm to the individual or others;

(3) the requirements of any component of the ISP have been followed but have not reduced the risk of imminent harm to the individual or others;

(4) a psychiatrist or PCP has determined that early administration of a regularly prescribed psychotropic medication instead of chemical restraint is not a reasonable option; and

(5) a psychiatrist or PCP approves and orders the use of the chemical restraint.

#### *§3.606. Imminent Harm Resulting from Documented Self-Injurious Behavior.*

(a) Only staff who have successfully completed competency-based training on the use of restraints may implement restraint procedures. Staff who implement restraint procedures must also complete training on person-specific instructions and other measures regarding restraints contained in an individual's protective mechanical restraint plan for self-injurious behavior or other plan.

(b) Staff may implement restraint to protect an individual from imminent harm resulting from documented self-injurious behavior if the following conditions have been met:

(1) the IDT has developed an ISP action plan for the individual that describes the need for protective mechanical restraint for self-injurious behavior; includes the procedures that will be employed to reduce the need for restraint, including a PBSP; and provides specific individualized instructions for staff on how to apply the restraints safely and the periods of time and the conditions under which the restraints can be safely removed;

(2) a structural and functional assessment has been completed or revised that identifies possible functions of the self-injurious behavior;

(3) the IDT has developed other clinical plans, as applicable, such as habilitation plans supported by an assessment or evaluation, to reduce the need for protective mechanical restraint;

(4) a PBSP has been completed or revised, based on a structural and functional assessment, that includes procedures, as appropriate, for teaching and strengthening alternative behaviors to self-injurious behaviors and teaching procedures that will help prevent self-injurious behavior as the time without the use of protective mechanical restraints increases;

(5) the instructions for applying the protective mechanical restraint for self-injurious behavior have been developed, including a schedule for removing and replacing the mechanical restraint that safely increases the time out of protective mechanical restraint;

(6) a PCP has assessed the individual and determined that the self-injurious behavior is at an intensity and frequency that causes imminent risk of serious physical injury and there is a need for protective mechanical restraints for self-injurious behavior; and

(7) a system for monthly reviews of data by the IDT has been established, including the PCP's continued reevaluation as to whether the intensity and frequency of the self-injurious behavior warrants continuing the restraint plan.

#### *§3.607. Release.*

(a) An individual who is restrained as a result of a behavioral crisis must be released from restraint as soon as he or she no longer poses an imminent risk of physical harm to self or others.

(b) The PCP or appropriate provider must determine the release criteria for an individual restrained in response to imminent harm resulting from a medical or dental procedure.

(c) For mechanical restraints used for protection from self-injurious behavior, removal of restraints must follow the individual's protective mechanical restraint plan for self-injurious behavior. A fading schedule, designed to phase out the use of a restraint device, must be reviewed by the IDT, including the PCP and appropriate therapists, each month and adjusted to permit the maximum safe time out of restraints.

(d) If an individual experiences a medical emergency while in restraint, staff must release the individual from the restraint immediately and ensure that the medical emergency is promptly addressed according to statewide and facility policies and procedures.

*§3.608. Reporting, Tracking, and Documentation.*

(a) Staff must report and investigate a serious injury or death occurring during restraint or within 24 hours after the release from a restraint in accordance with statewide policy on incident management.

(b) The facility must review the use of each restraint in a timely manner to determine whether the application of restraint was justified, the restraint was applied correctly, injuries occurred, or factors exist that, if modified, may prevent the future use of restraint.

(c) A pharmacist and psychiatrist must conduct a clinical review of each chemical restraint in a timely manner to determine whether the restraint was clinically justified, to identify any potential medication-related risks, and to make any applicable recommendations to the IDT.

(d) The IDT, with a determination of risk of physical harm made by the PCP, must review the continued application of restraint in response to risk from documented self-injurious behavior monthly to determine whether current risk warrants continuing the restraint, to analyze the effectiveness of the fading plan, and to adjust the time without restraint, if possible to safely do so.

(e) The IDT must review an individual restrained in response to a behavioral crisis or medical or dental intervention at least quarterly to assess progress in changing the circumstances that lead to the use of restraint.

(f) A facility must track, trend, and analyze data regarding the application of restraints in accordance with statewide policy on the use of restraints to identify issues or emerging trends and to develop appropriate responses.

(g) DADS must report the restraint of an individual to the executive commissioner.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kenneth L. Owens

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Department of Aging and Disability Services

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For further information, please call: (512) 438-4466



## CHAPTER 5. PROVIDER CLINICAL RESPONSIBILITIES--INTELLECTUAL DISABILITY SERVICES

### SUBCHAPTER H. USE OF RESTRAINT IN STATE FACILITIES

#### 40 TAC §§5.351 - 5.362, 5.364 - 5.366

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of Subchapter H, Use of Restraint in State Facilities, consisting of §§5.351 - 5.362 and 5.364 - 5.366, concerning purpose, application, definitions, general provisions, general principles for the use of restraint, use of restraint in a behavioral emergency, use of restraint in a behavior therapy program, use of restraint during medical or dental procedures and to promote healing, use of restraint with a mechanical device to prevent involuntary self-injury, use of restraint with a mechanical device to provide postural support, mechanical devices for use in restraint, additional reporting and documentation requirements, enforcement, references, and distribution, in Chapter 5, Provider Clinical Responsibilities--Intellectual Disability Services, without changes to the proposal as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8774).

The repeal is adopted to remove state supported living center (SSLC) requirements for restraints from the Chapter 5 rules. New rules in Chapter 3, published elsewhere in this issue of the *Texas Register*, consolidate requirements for the use of restraints on an individual residing in a state supported living center (SSLC) or the Rio Grande State Center.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

## SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

### 40 TAC §9.178

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §9.178, concerning certification principles: quality assurance in Chapter 9, Subchapter D, Home and Community-Based (HCS) Program, with changes to the proposed text as published in the January 25, 2013, issue of the *Texas Register* (38 TexReg 358). The rule will be republished.

The amendment is adopted to establish specific requirements regarding charges a Home and Community-based Services (HCS) program provider makes against an individual's personal funds. These requirements help ensure that an individual's financial welfare is protected and minimize the potential for financial exploitation of an individual.

The amendment requires an HCS provider to collect an amount for room equal to an amount necessary to maintain a three-person or four-person residence and lists the specific costs that must be included in determining the room charge. The amendment also requires an HCS provider to collect an amount for board for a three-person or four-person residence based on the costs of food and food supplies, unless collecting such an amount may make the individual ineligible for the Supplemental Nutrition Assistance Program operated by HHSC. These requirements establish a standard methodology for providers to determine a room and board charge and, therefore, help ensure that an individual is equitably contributing to the cost of the operation of a three-person or four-person residence.

The amendment requires that the cost for room consist only of an amount equal to (1) rent of a comparable dwelling in the same geographical area that is unfurnished or the program provider's ownership expenses consisting of the interest portion of a mortgage payment, depreciation expense, related property taxes, neighborhood association fees, and property insurance; and (2) the cost of various items to operate the residence including shared appliances, electronics, and housewares, monitoring for a security system and fire alarm system, property maintenance, and utilities.

Further, the amendment states that the cost for board must consist only of the cost of food, including food purchased for an individual to consume while away from the residence as a replacement for food and snacks normally prepared in the residence, and of supplies used for cooking and serving, such as utensils and paper products. The amendment requires that to determine the maximum room and board charge for each individual, a program provider must divide the room cost by the number of residents receiving HCS program services or similar services that the residence has been developed to support plus the number of service providers and other persons who also live in the residence and divide the board cost by the number of persons consuming the food. Further, the amendment prohibits a program provider from increasing the charge for room and board because a resident moves from the residence and from charging an individual a room and board amount that exceeds an amount determined in accordance with §9.178(r). The amendment requires a program provider to provide the room and board charge, in writing, to the individual or legally authorized representative (LAR).

The amendment prohibits a program provider from charging or collecting payment from any person for room and board provided to an individual receiving foster/companion care unless a program provider makes a payment to an individual's foster/companion care provider while waiting for the individual's federal or state benefits to be approved. Further, the amendment requires a program provider who manages personal funds of an individual who receives foster/companion care to pay the foster/companion care provider directly from the individual's account. The amendment also prohibits the provider from paying a foster/companion care provider a room and board charge that exceeds the foster/companion care provider's cost of room and board, as determined under §9.178(r), divided by the number of persons living in the foster/companion care provider's home.

The amendment clarifies that a program provider must not charge an individual for managing the individual's personal funds entrusted to the program provider. Further, the amendment requires the program provider to record specific information for all expenditures from the individual's account, including the amount and date of the expenditure, a written statement issued by the person to whom the expenditure was made that includes the date the statement was created and the cost of the item or service paid for and, if the expenditure is made to the individual for personal spending money, an acknowledgement signed by the individual indicating that the funds were received. The amendment also allows a program provider to accrue an expense for necessary items and services for which the individual's personal funds are not available for payment and, if such accrual is made, requires the provider to enter into a written payment plan with the individual or LAR for reimbursement of the funds.

The agency revised §9.178(r)(2). Specifically, new subparagraph (C) was added to allow an individual to choose to purchase the individual's own food, require the program provider to document this choice in the individual's implementation plan, and prohibit the program provider from collecting an amount for board if the individual chooses to purchase his or her own food.

DADS received written comments from one individual. A summary of the comment and the response follows.

Comment: Concerning §9.178(r)(1), one commenter stated that inclusion of cleaning supplies and personal hygiene supplies is missing from the proposed rule.

Response: The agency responds that "cleaning supplies" are included in the cost of room under §9.178(r)(1)(B)(v) which addresses "supplies" needed for property maintenance. The cost of an individual's personal hygiene items are not included as a cost of room because an individual is responsible for purchasing items of this nature. No changes were made in response to the comment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner.



regarding rules governing the delivery of services to persons who are served or regulated by DADS.

*§9.178. Certification Principles: Quality Assurance.*

(a) In the provision of HCS Program services to an individual, the program provider must promote the active and maximum cooperation with generic service agencies, non-HCS Program service providers, and advocates or other actively involved persons.

(b) The program provider must ensure personalized service delivery based upon the choices made by each individual or LAR and those choices that are available to persons without an intellectual disability or other disability.

(c) Before providing services to an individual in a residence in which foster/companion care, supervised living, or residential support is provided, and annually thereafter, the program provider must:

(1) conduct an on-site inspection to ensure that, based on the individual's needs, the environment is healthy, comfortable, safe, appropriate, and typical of other residences in the community, suited for the individual's abilities, and is in compliance with applicable federal, state, and local regulations for the community in which the individual lives;

(2) ensure that the service coordinator is provided with a copy of the results of the on-site inspection within five calendar days after completing the inspection;

(3) complete any action identified in the on-site inspection for a residence in which supervised living or residential support will be provided to ensure that the residence meets the needs of the individual; and

(4) ensure completion of any action identified in the on-site inspection for a residence in which foster/companion care will be provided to ensure that the residence meets the needs of the individual.

(d) The program provider must ensure that:

(1) emergency plans are maintained in each residence in which foster/companion care, supervised living or residential support is provided;

(2) the emergency plans address relevant emergencies appropriate for the type of service, geographic location, and the individuals living in the residence;

(3) the individuals and service providers follow the plans during drills and actual emergencies; and

(4) documentation of drills and responses to actual emergencies are maintained in each residence.

(e) The program provider must ensure that a four-person residence:

(1) meets one of the following requirements at the time the residence is reviewed by DADS in accordance with §9.188 of this subchapter (relating to DADS Approval of Residences) and at least annually thereafter:

(A) is certified by a local fire safety authority having jurisdiction for the location of the residence (or by HHSC if the local fire safety authority has refused to inspect for certification) to be in compliance with the relevant portions of Chapter 32 or Chapter 33 of the NFPA (National Fire Protection Association) 101 Life Safety Code applicable to small facilities and most recently adopted by the Texas State Fire Marshal's Office; or

(B) is certified by a fire safety authority having jurisdiction for the location of the residence to be in compliance with portions

of the International Fire Code applicable to an "Institutional Group I-1 occupancy" housing more than 16 persons and most recently adopted by the governmental entity having jurisdiction for the location of the residence;

(2) contains documentation of the residence's most recent inspection by the fire safety authority;

(3) is approved by DADS in accordance with §9.188 of this subchapter; and

(4) is in continuous compliance with all applicable local building codes and ordinances and applicable state and federal laws, rules, and regulations.

(f) The program provider must establish an ongoing consumer/advocate advisory committee composed of individuals, LARs, community representatives, and family members that meets at least quarterly. The committee, at least annually:

(1) reviews information provided by the program provider regarding satisfaction of individuals and LARs with the program provider's services as described in subsection (p)(1) of this section;

(2) reviews information provided by the program provider regarding complaints about the operations of the program provider as described in subsection (p)(2) of this section;

(3) reviews information provided by the program provider regarding incidents of confirmed abuse, neglect, and exploitation and unusual incidents as described in subsection (p)(3) of this section;

(4) reviews information provided by the program provider regarding termination of HCS Program services as described in subsection (p)(4) of this section;

(5) based on the information reviewed as required by this subsection, makes recommendations to the program provider for improvements to the processes and operations of the program provider; and

(6) reviews information provided by the program provider regarding the data about restraints described in subsection (p)(5) of this section.

(g) The program provider must make available all records, reports, and other information related to the delivery of HCS Program services as requested by DADS, other authorized agencies, or the Centers for Medicare and Medicaid Services and deliver such items, as requested, to a specified location.

(h) The program provider must conduct, at least annually, a satisfaction survey of individuals and LARs and take action regarding any areas of dissatisfaction.

(i) The program provider must publicize and make available a process for eliciting complaints and maintain a record of verifiable resolutions of complaints received from:

(1) individuals, their families, and LARs;

(2) staff members, service providers, and CDS service providers;

(3) the general public; and

(4) the local authority.

(j) The program provider must ensure that:

(1) the individual and LAR are informed of how to report allegations of abuse, neglect, or exploitation to DFPS and are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(2) all staff members and service providers:

(A) are instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited; and

(B) are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(3) all staff members and service providers report suspected abuse, neglect, or exploitation as instructed.

(k) If the program provider suspects an individual has been or is being abused, neglected, or exploited or is notified of an allegation of abuse, neglect, or exploitation, the program provider must take necessary actions to secure the safety of the alleged victim, including:

(1) obtaining immediate and ongoing medical or psychological services for the alleged victim as necessary;

(2) if necessary, restricting access by the alleged perpetrator of the abuse, neglect, or exploitation to the alleged victim or other individuals pending investigation of the allegation; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the alleged victim, the alleged victim's LAR, and the service coordinator of the allegation report and the actions that have been or will be taken.

(l) Staff members and service providers must cooperate with the DFPS investigation of an allegation of abuse, neglect, or exploitation, including:

(1) providing complete access to all HCS Program service sites owned, operated, or controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance with DFPS instructions.

(m) In all respite facilities and all residences in which a service provider of residential assistance or the program provider hold a property interest, the program provider must post in a conspicuous location:

(1) the name, address, and telephone number of the program provider;

(2) the effective date of the Waiver Program Provider Agreement; and

(3) the name of the legal entity named on the Waiver Program Provider Agreement.

(n) The program provider must:

(1) promptly, but not later than five calendar days after the program provider's receipt of a DFPS investigation report:

(A) notify the alleged victim or LAR and the service coordinator of:

(i) the investigation finding; and

(ii) the corrective action taken by the program provider in response to the DFPS investigation; and

(B) notify the alleged victim or LAR of:

(i) the process to appeal the investigation finding as described in Chapter 711, Subchapter M, of this title (relating to Re-

questing an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Advocacy, Incorporated); and

(ii) the process for requesting a copy of the investigative report from the program provider;

(2) report to DADS in accordance with DADS instructions the program provider's response to the DFPS investigation that involves a staff member or service provider within 14 calendar days after the program provider's receipt of the investigation report; and

(3) upon request of the alleged victim or LAR, provide to the alleged victim or LAR a copy of the DFPS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

(o) If abuse, neglect, or exploitation is confirmed by the DFPS investigation, the program provider must take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation, including, when warranted, disciplinary action against or termination of the employment of a staff member confirmed by the DFPS investigation to have committed abuse, neglect, and exploitation.

(p) At least annually, the program provider must:

(1) evaluate information about the satisfaction of individuals and LARs with the program provider's services and identify program process improvements to increase the satisfaction;

(2) review records of complaints, as described in subsection (i) of this section about the operations of the program provider and identify program process improvements to reduce the filing of complaints;

(3) review incidents of confirmed abuse, neglect, or exploitation; complaints; and unusual incidents; and identify program process improvements that will prevent the reoccurrence of such incidents and improve service delivery;

(4) review the reasons for terminating HCS Program services to individuals and identify any related need for program process improvements;

(5) evaluate its use of restraint and, at a minimum, compare aggregate data provided by DADS at [www.dads.state.tx.us](http://www.dads.state.tx.us) with critical incident data concerning use of restraint and identify program process improvements that will prevent the reoccurrence of restraints and improve service delivery;

(6) provide all information the program provider reviewed, evaluated, and created as described in paragraphs (1) - (5) of this subsection to the consumer/advocate advisory committee required by subsection (f) of this section;

(7) implement any program process improvements identified by the program provider in accordance with this subsection; and

(8) review recommendations made by the consumer/advocate advisory committee as described in subsection (f)(5) of this section and implement the recommendations approved by the program provider.

(q) The program provider must ensure that all personal information concerning an individual, such as lists of names, addresses, and records obtained by the program provider is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the program provider's HCS Program, and is otherwise neither directly nor indirectly used or disclosed unless the consent of the individual to whom the information applies or his or her LAR is obtained beforehand.

(r) The program provider must comply with this subsection regarding charges against an individual's personal funds.

(1) The program provider must, in accordance with this paragraph, collect a monthly amount for room from an individual who lives in a three-person or four-person residence. The cost for room must consist only of:

(A) an amount equal to:

(i) rent of a comparable dwelling in the same geographical area that is unfurnished; or

(ii) the program provider's ownership expenses, limited to the interest portion of a mortgage payment, depreciation expense, property taxes, neighborhood association fees, and property insurance; and

(B) the cost of:

(i) shared appliances, electronics, and housewares;

(ii) shared furniture;

(iii) monitoring for a security system;

(iv) monitoring for a fire alarm system;

(v) property maintenance, including personnel costs, supplies, lawn maintenance, pest control services, carpet cleaning, septic tank services, and painting;

(vi) utilities, limited to electricity, gas, water, garbage collection, and a landline telephone; and

(vii) shared television and Internet service used by the individuals who live in the residence.

(2) Except as provided in subparagraphs (B) and (C) of this paragraph, a program provider must collect a monthly amount for board from an individual who lives in a three-person or four-person residence.

(A) The cost for board must consist only of the cost of food, including food purchased for an individual to consume while away from the residence as a replacement for food and snacks normally prepared in the residence, and of supplies used for cooking and serving, such as utensils and paper products.

(B) A program provider is not required to collect a monthly amount for board from an individual if collecting such an amount may make the individual ineligible for the Supplemental Nutrition Assistance Program operated by HHSC.

(C) A program provider must not collect a monthly amount for board from an individual if the individual chooses to purchase the individual's own food, as documented in the individual's implementation plan.

(3) To determine the maximum room and board charge for each individual, a program provider must:

(A) divide the room cost described in paragraph (1) of this subsection by the number of residents receiving HCS Program services or similar services that the residence has been developed to support plus the number of service providers and other persons who live in the residence;

(B) divide the board cost described in paragraph (2) of this subsection by the number of persons consuming the food; and

(C) add the amounts calculated in accordance with subparagraphs (A) and (B) of this paragraph.

(4) A program provider must not increase the charge for room and board because a resident moves from the residence.

(5) A program provider:

(A) must not charge an individual a room and board amount that exceeds an amount determined in accordance with paragraphs (1) - (3) of this subsection; and

(B) must maintain documentation demonstrating that the room and board charge was determined in accordance with paragraphs (1) - (3) of this subsection.

(6) Before an individual or LAR selects a residence, a program provider must provide the room and board charge, in writing, to the individual or LAR.

(7) Except as provided in paragraph (8) of this subsection, a program provider may not charge or collect payment from any person for room and board provided to an individual receiving foster/companion care.

(8) If a program provider makes a payment to an individual's foster/companion care provider while waiting for the individual's federal or state benefits to be approved, the program provider may seek reimbursement from the individual for such payments.

(9) A program provider who manages personal funds of an individual who receives foster/companion care:

(A) may pay a room and board charge for the individual that is less than the foster/companion care provider's cost of room and board, as determined using the calculations described in paragraphs (1) and (2) of this subsection for a three-person or four-person residence, divided by the number of persons living in the foster/companion care provider's home;

(B) must pay the foster/companion care provider directly from the individual's account; and

(C) must not pay a foster/companion care provider a room and board charge that exceeds the foster/companion care provider's cost of room and board, as determined using the calculations described in paragraphs (1) and (2) of this subsection for a three-person or four-person residence, divided by the number of persons living in the foster/companion care provider's home.

(10) For an item or service other than room and board, the program provider must apply a consistent method in assessing a charge against the individual's personal funds that ensures that the charge for the item or service is reasonable and comparable to the cost of a similar item or service generally available in the community.

(s) The program provider must ensure that the individual or LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds before the charges are assessed.

(t) The program provider must not assess charges against the individual's personal funds for costs for items or services reimbursed through the HCS Program.

(u) At the written request of an individual or LAR, the program provider must manage the individual's personal funds entrusted to the program provider, without charge to the individual or LAR in accordance with this subsection.

(1) The program provider must not commingle the individual's personal funds with the program provider's funds.

(2) The program provider must maintain a separate, detailed record of:

(A) all deposits into the individual's account; and

(B) all expenditures from the individual's account that includes:

- (i) the amount of the expenditure;
- (ii) the date of the expenditure;
- (iii) the person to whom the expenditure was made;
- (iv) except as described in clause (vi) of this subparagraph, a written statement issued by the person to whom the expenditure was made that includes the date the statement was created and the cost of the item or service paid for;
- (v) if the statement described in clause (iv) of this subparagraph documents an expenditure for more than one individual, the amount allocated to each individual identified on the statement; and
- (vi) if the expenditure is made to the individual for personal spending money, an acknowledgement signed by the individual indicating that the funds were received.

(3) The program provider may accrue an expense for necessary items and services for which the individual's personal funds are not available for payment, such as room and board, medical and dental services, legal fees or fines, and essential clothing.

(4) If an expense is accrued as described in paragraph (3) of this subsection, the program provider must enter into a written payment plan with the individual or LAR for reimbursement of the funds.

(v) If the program provider determines that an individual's behavior may require the implementation of behavior management techniques involving intrusive interventions or restriction of the individual's rights, the program provider must comply with this subsection.

(1) The program provider must:

- (A) obtain an assessment of the individual's needs and current level and severity of the behavior;
- (B) ensure that a service provider of behavioral support services:

- (i) develops, with input from the individual, LAR, program provider, and actively involved persons, a behavior support plan that includes the use of techniques appropriate to the level and severity of the behavior; and

- (ii) considers the effects of the techniques on the individual's physical and psychological well-being in developing the plan.

(2) The behavior support plan must:

- (A) describe how the behavioral data concerning the behavior is collected and monitored;
- (B) allow for the decrease in the use of the techniques based on the behavioral data; and
- (C) allow for revision of the plan when desired behavior is not displayed or the techniques are not effective.

(3) Before implementation of the behavior support plan, the program provider must:

- (A) obtain written consent from the individual or LAR to implement the plan;
- (B) provide written notification to the individual or LAR of the right to discontinue implementation of the plan at any time; and

(C) notify the individual's service coordinator of the plan.

(4) The program provider must, at least annually:

- (A) review the effectiveness of the techniques and determine whether the behavior support plan needs to be continued; and
- (B) notify the service coordinator if the plan needs to be continued.

(w) The program provider must report the death of an individual to DADS and the service coordinator by the end of the next business day following the death or the program provider's learning of the death and, if the program provider reasonably believes that the LAR does not know of the individual's death, to the LAR as soon as possible, but not later than 24 hours after the program provider learns of the individual's death.

(x) A program provider must not discharge or otherwise retaliate against:

(1) a staff member, service provider, individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the:

- (A) misuse of restraint by the program provider;
- (B) use of seclusion by the program provider; or
- (C) possible abuse, neglect, or exploitation of an individual; or

(2) an individual because someone on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to the:

- (A) misuse of restraint by the program provider;
- (B) use of seclusion by the program provider; or
- (C) possible abuse, neglect, or exploitation of an individual.

(y) A program provider must enter critical incident data in CARE no later than 30 calendar days after the last day of the month being reported.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) adopts the repeal of §2.23, Memorandum of Understanding with the Texas Natural Resource Conservation Commission. The department simultaneously adopts the replacement of the repealed section with new Subchapter I, §§2.301 - 2.308, Memorandum of Understanding with the Texas Commission on Environmental Quality. The repeal of §2.23 and new §§2.301 - 2.308 are adopted without changes to the proposal as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 801) and will not be republished.

#### EXPLANATION OF ADOPTED REPEAL AND NEW SECTIONS

Transportation Code, §201.607 requires the department to adopt a memorandum of understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historic or archeological resources. Transportation Code, §201.607 also requires the department to adopt the MOU and all revisions to it by rule and to periodically evaluate and revise the MOU. In order to meet the legislative intent and to ensure that natural resources are given full consideration in accomplishing the department's activities, the department has evaluated its MOU with the Texas Commission on Environmental Quality (TCEQ) adopted in 2002 and finds it necessary to repeal existing §2.23 and simultaneously adopt new Subchapter I, §§2.301 - 2.308.

The new MOU between TCEQ and the department satisfies the statutory requirements for reviewing and revising MOUs with resource agencies. It is intended to replace the existing MOU, which has been in effect since March 21, 2002, with an MOU that more effectively streamlines TCEQ's review of the department's projects and simultaneously better allows TCEQ to focus on those projects most likely to affect natural resources. The MOU is better organized than the existing MOU, with different subject areas broken into separate sections. The MOU recognizes that the legislature changed the name of the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality. Additionally, the MOU reflects changes made by the department's recent revision of its environmental review rules, published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1727).

#### SECTION BY SECTION EXPLANATION OF MOU

Section 2.301 sets out the purpose of the MOU, to provide a formal mechanism by which TCEQ reviews transportation projects that have the potential to affect resources within TCEQ's jurisdiction.

Section 2.302 sets forth the statutory authority for TxDOT and TCEQ to enter into the MOU.

Section 2.303 contains definitions of various terms used in the MOU.

Section 2.304 sets forth the statutory responsibilities of TxDOT and TCEQ that are relevant to the purpose of the MOU.

Section 2.305 sets forth procedures for determining whether the department is required to coordinate a given transportation project with TCEQ. TxDOT will not coordinate a project that TxDOT classifies as a categorical exclusion, blanket categorical exclusion, or programmatic categorical exclusion under §2.81 or §2.82 of Chapter 2. TxDOT will coordinate a project for which TxDOT prepares an environmental assessment unless TxDOT has already coordinated an environmental report (discussed below) concerning the project and certain other conditions are

met. TxDOT will coordinate a project for which TxDOT prepares an environmental impact statement. TxDOT will coordinate a reevaluation concerning a project if the earlier coordination concerning the project is no longer valid as a result of changes in the project.

Section 2.305(a) recognizes TxDOT's new procedures that allow TxDOT to prepare an environmental report, which is a report, form, checklist, or other documentation analyzing an environmental issue in the context of a specific transportation project or presenting a thorough summary of an environmental study conducted in support of an environmental review document or demonstrating compliance with a specific environmental requirement. TxDOT's recently-adopted rules authorize a project sponsor to prepare an environmental report and submit it for technical review before the environmental review document is completed (see, 43 TAC §2.45). Similarly, the MOU would allow, but not require, TxDOT to coordinate separately an environmental report with TCEQ. For projects for which TxDOT prepares an environmental assessment, the MOU would allow TxDOT to satisfy coordination requirements by coordinating an environmental report provided all of the conditions in §2.305(a)(2)(B) are met.

Section 2.305(b) contains triggers for determining when coordination is required for projects for which TxDOT prepares an environmental assessment. For example, coordination is required if a project will add capacity in a nonattainment or maintenance area of the state. Use of these triggers will allow TCEQ to focus its resources on reviewing those projects most likely to adversely affect natural resources.

Section 2.305(c) includes general provisions concerning compliance with law and the computation of time. The MOU would authorize TxDOT (but not a local government) to conduct the coordination with TCEQ.

Section 2.305(d) specifies the protocols for TxDOT transmitting an environmental report or environmental review document to TCEQ and then TCEQ transmitting back its comments on the document. TCEQ must submit its comments within 30 days, unless TCEQ gives notice that it is extending the deadline for no more than an additional 15 days. TxDOT will respond in writing to TCEQ's comments and will ensure that the final version of the environmental review document describes the results of any coordination with and comments made by TCEQ.

Section 2.306 explains that TCEQ will provide publicly available information to TxDOT related to air quality so that TxDOT may incorporate such information into its analyses of how a project may impact air resources.

Section 2.307 states that TCEQ reserves all rights it has to enforce relevant laws and that the parties intend that TCEQ's participation in this MOU does not have the effect of waiving those rights or the requirements of any laws that apply to the projects covered by the MOU. Also, the parties agree that the MOU does not preclude either party from making any legal argument.

Section 2.308 expresses the intent of TxDOT and TCEQ to update the MOU in the future as required by Transportation Code, §201.607, or as necessitated by a change in state and federal law or a change in the state implementation plan.

#### COMMENTS

No comments on the proposed repeal or new sections were received.

## SUBCHAPTER B. MEMORANDA OF UNDERSTANDING WITH NATURAL RESOURCE AGENCIES

### 43 TAC §2.23

#### STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.607(b), which requires the department to adopt memoranda of understanding with each agency that has responsibility for the protection of the natural environment or for the preservation of historical or archeological resources, and to adopt all revisions to these memoranda by rule.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §201.607.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Joanne Wright

Deputy General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8683



## SUBCHAPTER I. MEMORANDUM OF UNDERSTANDING WITH THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

### 43 TAC §§2.301 - 2.308

#### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.607(b), which requires the department to adopt memoranda of understanding with each agency that has responsibility for the protection of the natural environment or for the preservation of historical or archeological resources, and to adopt all revisions to these memoranda by rule.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §201.607.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) adopts the repeal of §2.24, Memorandum of Understanding with the Texas Historical Commission. The department simultaneously adopts and replaces the repealed section with new Subchapter H, §§2.251 - 2.278, Memorandum of Understanding with the Texas Historical Commission. The repeal of §2.24 and new §§2.251 - 2.278 are adopted without changes to the proposal as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 807) and will not be republished.

#### EXPLANATION OF ADOPTED REPEAL AND NEW SECTIONS

Transportation Code, §201.607 requires the department to adopt a memorandum of understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historic or archeological resources. Transportation Code, §201.607 also requires the department to adopt the MOU and all revisions to it by rule and to periodically evaluate and revise the MOU. In order to meet the legislative intent and to ensure that historic and archeological resources are given full consideration in accomplishing the department's activities, the department has evaluated its MOU with the Texas Historical Commission (THC), adopted in 2004, and finds it necessary to repeal existing §2.24 and simultaneously adopt new Subchapter H, §§2.251 - 2.278.

The new MOU between THC and the department satisfies the statutory requirements for reviewing and revising MOUs with resource agencies. It is intended to replace the existing MOU, which has been in effect since May 20, 2004, with an MOU that more effectively streamlines THC's review of the department's projects and simultaneously better allows THC to focus on those projects most likely to affect historic or archeological resources. The MOU has several new provisions and procedures that were developed based on experience gained from numerous projects that the department has submitted and THC has reviewed since the 2004 MOU was executed. It is also better organized than the existing MOU, with different subject areas broken into separate sections. Additionally, the MOU reflects changes made by the department's recent revision of its environmental review rules, published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1727).

#### SECTION BY SECTION EXPLANATION OF MOU

Section 2.251 sets out the purpose of the MOU, identifies the statutory provisions under which the MOU is adopted, and explains that the MOU supersedes the 2004 MOU.

Section 2.252 sets forth the applicability of the MOU by explaining that it applies to any transportation project for which an environmental review is performed under the department's environmental review rules and any other project coordinated at the department's request. Whether coordination for a given project is required under the MOU is addressed in §2.255, concerning

Coordination Responsibilities, §2.257, concerning Projects Excluded from Review for Archeological Resources and Cemeteries, and §2.270, concerning Projects Excluded from Review for Non-Archeological Historic Properties. Section 2.252 also clarifies that federally funded, licensed, or permitted projects may follow the procedures set forth in the MOU only if doing so would not conflict with the lead federal agency's environmental rules.

Section 2.253 explains that, for federally funded projects, the terms of a programmatic agreement among the department, the Federal Highway Administration, the Texas State Historic Preservation Officer, and the Advisory Council on Historic Preservation, if applicable, will control rather than terms of the MOU. The section also obligates the department and THC to seek to revise the existing programmatic agreement to reflect the procedures of the MOU.

Section 2.254 contains definitions of various terms used in the MOU.

Section 2.255 sets forth the department's and THC's coordination responsibilities under the MOU. It explains that the department shall coordinate with THC on all transportation projects for which the department is the project sponsor under 43 TAC §2.7 unless the project is of a type that is exempt from coordination under another section of the MOU. Section 2.255 also specifies that coordination required by the MOU must be conducted by or through the department's Environmental Affairs Division, unless otherwise agreed to by THC. The section also clarifies that coordination of work in department right-of-way associated with a project for which the department is not the project sponsor under 43 TAC §2.7 is the responsibility of the project sponsor, and not the department, unless the department and THC agree that the department will coordinate the project. Finally, the section generally describes THC's coordination responsibilities under the MOU, such as to conduct any required review in an efficient manner.

Section 2.256 sets parameters on staff qualifications and the use of consultants for cultural resource investigations undertaken in accordance with the MOU. For example, all staff conducting such an investigation must meet certain professional standards detailed in the section.

Section 2.257 exempts certain types of routine projects from the requirement to conduct a project-specific review for impacts to archeological resources or cemeteries. Examples of exempt project types include installation, repair, or replacement of fencing, resurfacing, and replacement, upgrade, or repair of safety barriers. The section further explains that project types exempted from review under the MOU are also exempt from other THC rules regarding project-specific investigations or coordination for potential impacts to cemeteries, unless certain conditions are present.

Section 2.258 sets forth the procedures for project coordination when review for archeological resources and cemeteries is required. If, after conducting an evaluation of the area for potential effects for a given project, the department determines that the project will not affect archeological historic properties and that the area of potential effects contains no cemeteries, the department may approve the project to proceed to construction without review by THC. The department must submit to THC a quarterly report of projects so evaluated and internally approved.

If the department determines that a given project may affect archeological historic properties, or that the area of potential effects contains a cemetery, the department must submit to the

THC a request for review of the project. Section 2.258 explains the different types of findings, determinations, and recommendations that the department must include in its request for review. If the project will have an adverse effect on an archeological historic property or cemetery within the area of potential effects, the department must recommend to THC appropriate means by which to resolve the potential adverse effect. The section specifies the various forms the resolution of adverse effects may take and prescribes various requirements for cases in which data recovery is the selected means for resolving adverse effects. Finally, §2.258 sets parameters on when and how THC must respond to a request for review submitted by the department.

Section 2.259 contains provisions governing the department's investigations of a project's area of potential effects, including provisions for determining when field investigations are required and when background information such as maps and project-area photographs may be used.

Section 2.260 sets forth procedures for THC's issuance of antiquities permits to the department. Under these procedures, the department is not required to submit an antiquities permit application provided that certain conditions are satisfied, such as that the department provides THC with notification of the work and that the work is overseen by the archeological staff of the department's Environmental Affairs Division. The section also includes provisions allowing the department to initiate work under an emergency permit when conditions of natural disasters, man-made disasters, or post-review discovery necessitate immediate action. Provisions governing the department's work under permits issued by THC, such as provisions explaining when work under a permit will be considered complete, are also included in §2.260.

Section 2.261 contains provisions governing the department's conduct of surveys to investigate archeological resources and cemeteries. For example, the section explains that subsurface investigation is not required where it can be demonstrated that the portion of the site to be affected is not likely to have sufficient integrity to be eligible for designation as a State Antiquities Landmark.

Section 2.262 prescribes methods to be used by the department when conducting test excavations. The section allows the department to depart from the specified methods in cases where it is deemed appropriate, but requires the department to justify deviations in the resulting written report. Section 2.262 also requires data from test excavation projects to be made available to qualified researchers.

Section 2.263 requires the department, under certain conditions, to develop public educational outreach projects for significant data recovery investigations. Section 2.263 requires data from data recovery projects to be made available to qualified researchers.

Section 2.264 concerns exhumation, which is a form of investigation to resolve a project's adverse effects on a cemetery. The section explains when exhumation efforts may begin and identifies tasks that represent a sufficient, reasonable, and good faith effort to identify remains and any next of kin associated with burials in unknown or abandoned cemeteries.

Section 2.265 prescribes the procedures the department must follow when it discovers an archeological site after it has awarded a construction contract. The department must immediately suspend construction or any other activities that

would affect the site and perform various specified tasks before resuming.

Section 2.266 concerns standard treatments for particular resource types. It sets forth standards to be followed by the department when encountering isolated wells or cisterns unassociated with other remains or burnt rock midden features that have not been obviously destroyed by modern disturbances.

Section 2.267 sets standards for the department's recovery and curation of artifacts. For example, while the department may temporarily house artifacts and samples during laboratory analysis and research, it must transfer them to a permanent curatorial facility upon completion of the analysis.

Section 2.268 establishes minimum documentation requirements for projects subject to review for archeological resources and cemeteries under the MOU.

Section 2.269 requires the department to submit to THC quarterly reports listing all projects for which the department documented that no historic properties are present in the area of potential effects or that the project will have no adverse effects on archeological historic properties or cemeteries.

Section 2.270 pertains to review for impacts to non-archeological historic properties. It lists a number of project types that pose limited potential to affect historic properties and provides that, for listed project types, if qualified department staff determine that no evaluation of a given project is needed, then none is required under the MOU or under other THC rules.

Section 2.271 explains the procedure for review of a project for impacts to non-archeological historic properties when an evaluation is required. The section sets forth two different levels of review: internal review and coordinated review. For a project subject to review for impacts to non-archeological historic resources, if department personnel determine that the project will have no effect or no adverse effect on historic properties, then only internal review is required. Such a project is required to be recorded on a quarterly report.

If a project is determined by department personnel to have an adverse effect on a historic property, then coordinated review is required. Under the §2.271 procedures, THC must respond within 20 calendar days of the department's request for review by indicating whether an affected historic property will require a historic structures permit or whether THC intends to initiate a State Antiquities Landmark nomination for the affected property. If THC does not respond within 20 days, the department may assume THC's concurrence with its determinations and proceed with construction of the project. Section 2.271 also contains provisions governing notification of work affecting a county courthouse, projects that may subsequently require a federal permit or change to federal funding and that involve a direct taking of an historic property, and required documentation both for projects internally reviewed and for projects for which coordinated review is conducted.

Section 2.272 explains that, in cases in which the department cannot gain access to private land needed to complete an investigation under the MOU prior to approval of the environmental review document, it must complete the investigation once access is obtained, but prior to any construction-related impacts.

Section 2.273 provides that if the department utilizes the procedures set forth in the MOU, then it will be considered to be

in compliance with any other applicable THC requirements. In other words, with respect to department projects, the terms of the MOU control over THC's generally applicable rule requirements.

Section 2.274 specifies that any project-specific agreements reached between the department and THC will supersede the requirements of the MOU.

Section 2.275 obligates the department and THC to collaborate on improvements to their programs and development of innovative solutions for expedited review procedures, such as using project outcomes to refine approaches to resource identification, evaluation, treatment methods, programmatic mitigation measures and interagency agreements that facilitate early coordination, streamlining, and expedited review of the department's transportation projects.

Section 2.276 allows THC to review department project files for specific undertakings carried out under the MOU and recommend process improvements based on issues identified during the review.

Section 2.277 provides that THC and department staff will be responsible for attempting to resolve any conflict between THC and the department that results from the implementation of this subchapter before elevating to agency management.

Section 2.278 provides that THC and the department will convene every four years to review, update, or extend this agreement. This review cycle is shorter than the five-year review cycle prescribed by Transportation Code, §201.607(a).

#### COMMENTS

No comments on the proposed repeal or new sections were received.

### SUBCHAPTER B. MEMORANDA OF UNDERSTANDING WITH NATURAL RESOURCE AGENCIES

#### 43 TAC §2.24

##### STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.607(b), which requires the department to adopt memoranda of understanding with each agency that has responsibility for the protection of the natural environment or for the preservation of historical or archeological resources, and to adopt all revisions to these memoranda by rule.

##### CROSS REFERENCE TO STATUTE

Transportation Code, §201.607.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER H. MEMORANDUM OF UNDERSTANDING WITH THE TEXAS HISTORICAL COMMISSION

### 43 TAC §§2.251 - 2.278

#### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.607(b), which requires the department to adopt memoranda of understanding with each agency that has re-

sponsibility for the protection of the natural environment or for the preservation of historical or archeological resources, and to adopt all revisions to these memoranda by rule.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §201.607.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2013.

TRD-201301662

Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Effective date: May 16, 2013  
Proposal publication date: February 15, 2013  
For further information, please call: (512) 463-8683

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# REVIEW OF AGENCY RULES

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Adopted Rule Reviews

Texas Education Agency

### Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 101, Assessment, Subchapter A, General Provisions; Subchapter B, Implementation of Assessments; and Subchapter C, Local Option, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 101, Subchapters A-C, in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1881).

The SBOE finds that the reasons for adopting 19 TAC Chapter 101, Subchapters A-C, continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapters A-C. No changes are necessary as a result of the review.

TRD-201301729

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: May 1, 2013



Texas State Library and Archives Commission

### Title 13, Part 1

The Texas State Library and Archives Commission has completed the review of Chapter 3, concerning the State Publications Depository Program, in accordance with the requirements of Government Code §2001.039. Notice of the review was published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8860).

The commission finds that the reasons for the adoption of the rules in Chapter 3 continue to exist. The rules were adopted pursuant to the Government Code §441.102(a), which requires the Texas State Library and Archives Commission to adopt policies to ensure the distribution of state publications to depository libraries; Government Code §441.103(b), which requires the Texas State Library and Archives Commission to adopt policies to ensure the acquisition of state publications from state agencies and institutions of higher education; Government Code §441.104(7) and (8), which requires the Texas State Library and Archives Commission to adopt policies to provide indexes of and electronic access to all state publications in electronic format; and Government Code §441.010(b), which

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

establishes an electronically searchable central grant database. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission for the establishment and maintenance of a state publications depository program.

The commission re-adopts Chapter 3 in accordance with the Government Code §2001.039. No comments were received regarding the review of the chapter.

TRD-201301730

Edward Seidenberg

Interim Director and Librarian

Texas State Library and Archives Commission

Filed: May 1, 2013



Texas Board of Veterinary Medical Examiners

### Title 22, Part 24

The Texas Board of Veterinary Medical Examiners (TBVME) adopts the rule review of 22 TAC Chapter 575, Practice and Procedure, pursuant to the Texas Government Code §2001.039.

The proposed rule review was published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 679).

No comments were received regarding adoption of the rule review.

The TBVME has determined that the reasons for adopting the rules continue to exist.

The TBVME published the adoption of amendments to §§575.10, 575.20, 575.28, 575.29, 575.30, and 575.50 in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2761). With those amendments, the rules are readopted by TBVME in accordance with Texas Government Code §2001.039.

This concludes the rule review of Chapter 575, Practice and Procedure.

TRD-201301712

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Filed: May 1, 2013



# IN

## ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

### Office of the Attorney General

#### Texas Water Code and Texas Health and Safety Code Settlement Notice

The State of Texas hereby gives notice of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *The State of Texas, v. Daniel Carl Loper, and Justin David Loper, Individually and d/b/a Rio Leche Dairy #1 and Rio Leche Dairy #2*, Cause No. D-1-GV-06-000751, in the 200th Judicial District Court, Travis County, Texas.

Nature of Defendants' Operations: This suit involves operations at two dairies owned and operated by the Defendants. The sites are located near Dublin, Erath County, Texas. TCEQ investigations of the Defendants' sites revealed that the Defendants mismanaged manure and wastewater, failed to maintain records, monitor their waste discharges, and manage facilities as required by Texas statutes and regulations and a TCEQ administrative order.

Proposed Agreed Judgment: The Agreed Final Judgment orders Defendants to pay civil penalties, administrative penalties, and costs of prosecution to the State. Defendants agree to pay administrative penalties to the State in the amount of \$22,000. Defendants will also pay civil penalties to the State in the amount of \$15,500. The Defendant will pay attorney's fees to the State of Texas in the amount of \$7,500.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Megan Neal, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201301657  
Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: April 25, 2013



#### Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State

may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *Harris County, Texas and the State of Texas, acting on behalf of the Texas Commission on Environmental Quality v. Fisher Ham and Meat Co.*, Cause No. 2012-10965, in the 127th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: This suit involves operations at a slaughterhouse and meat processing facility owned and operated by the Defendant. The facility is located at 5023 and 5013 Spring Cypress Road, Spring, Harris County, Texas. On several occasions, the wastewater pond at the facility overflowed during rain events, discharging a mix of water, blood and other bodily fluids resulting from the slaughter process into nearby storm ditches and neighbors' yards. The Defendant does not possess a permit from the TCEQ to discharge such material. In addition to the unauthorized discharges of the blood and fluid-tainted water, the facility's livestock pens emitted an odor which was of a strength and duration so as to cause discomfort to those who encountered it. Upon investigation the pens which held numerous live pigs awaiting slaughter were flooded with stagnant water.

Proposed Agreed Judgment: The Agreed Final Judgment orders Defendant to pay civil penalties, and costs of prosecution to the State. Defendant agrees to pay civil penalties of \$40,000, to be divided equally between Harris County and the State of Texas; of that amount, \$20,000 will be deferred contingent upon Defendant's complete compliance with the permanent injunction. The Defendant will pay attorney's fees to the State of Texas in the amount of \$4,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to David J. Preister, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201301685  
Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: April 29, 2013



### Comptroller of Public Accounts

#### Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapters 403 and 2254, Subchapter A of the Texas Government Code; and Chapters 72 - 75 of the Texas Property Code, the Comptroller of Public Accounts ("Comp-

troller") announces the issuance of its Request for Proposals ("RFP #206e") from qualified, independent unclaimed property audit firms to assist Comptroller in performing unclaimed property audit and related services for Comptroller, including but not limited to, the identification, processing, and collection of unclaimed property due to the State of Texas under Chapters 72 - 75 of the Texas Property Code. Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s) will be expected to begin performance of the contract(s), if any, awarded under this RFP on or about September 1, 2013.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, May 10, 2013, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact Robin Reilly, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, May 24, 2013. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail Questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely receipt. On or about Friday, June 7, 2013, Comptroller expects to post responses to questions as an addendum to the Electronic State Business Daily notice on the issuance of the RFP.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, June 21, 2013. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of their proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller shall make the final decision on any contract award or awards resulting from the RFP. Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - May 10, 2013, after 10:00 a.m. CT; Questions Due - May 24, 2013, 2:00 p.m. CT; Official Responses to Questions posted June 7, 2013, or as soon thereafter as practical; Proposals Due - June 21, 2013, 2:00 p.m. CT; Contract Execution - August 1, 2013, or as soon thereafter as practical; and Commencement of Project Activities - on or after September 1, 2013. Any amendment to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal.

TRD-201301719

Robin Reilly

Assistant General Counsel, Contracts  
Comptroller of Public Accounts

Filed: May 1, 2013

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/29/13 - 05/05/13 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/29/13 - 05/05/13 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201301689

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 30, 2013

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is June 10, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on June 10, 2013. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: 1251 WOODHAVEN FOOD MART, INCORPORATED; DOCKET NUMBER: 2012-2593-PST-E; IDENTIFIER: RN101432235; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$2,931; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: 73 LAND CORPORATION, INCORPORATED dba Nutty Jerry's; DOCKET NUMBER: 2012-2175-PWS-E; IDENTIFIER: RN106239916; LOCATION: Winnie, Jefferson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notice of the failure to sample; 30 TAC §290.109(c)(3)(A)(i) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample and by failing to provide public notice of the failure to sample; and 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result for the month of July 2012; PENALTY: \$1,762; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: BASHIR INTERESTS, INCORPORATED dba FM Foods; DOCKET NUMBER: 2013-0054-PST-E; IDENTIFIER: RN102025210; LOCATION: Lovelady, Houston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,881; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Bosque Trading Enterprises, Incorporated dba Old Mill Store; DOCKET NUMBER: 2013-0154-PST-E; IDENTIFIER: RN101667145; LOCATION: Meridian, Bosque County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,880; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Candelario Reyna; DOCKET NUMBER: 2013-0271-OSS-E; IDENTIFIER: RN106544711; LOCATION: Brackettville, Kinney County; TYPE OF FACILITY: apartment complex with an associated on-site sewage facility (OSSF); RULE VIOLATED: 30 TAC §285.3(a) and (d)(4)(A), and Texas Health and Safety Code, §366.051(a), by failing to obtain a permit before placing an OSSF into operation; 30 TAC §285.32(a)(3), by failing to provide a slope of the pipe of no less than 1/8 inch per foot of sewer pipe; 30 TAC §285.32(a)(5), by failing to use sanitary type fittings constructed of Polyvinyl Chloride Schedule 40 or Standard Dimension Ratio 26 between the sewer stub out and the treatment tank; 30 TAC §285.30(b)(4) and §285.91(10), by failing to meet the minimum required ten-foot separation distance between the sewer line and the potable water lines; 30 TAC §285.3(d)(3), by failing to provide complete access to the facility in order to conduct the construction inspection; and 30 TAC §285.33(d)(2)(F), by failing to seed or cover with sod the bare ground in the spray area before system start-up; PENALTY: \$1,620; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(6) COMPANY: City of Follett; DOCKET NUMBER: 2011-0616-MWD-E; IDENTIFIER: RN101916559; LOCATION: Follett, Lipscomb County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2), TWC, §26.121(a)(1), and TCEQ AO Docket Number 2009-0961-MWD-E, Ordering Provision Number 2.b, by failing to maintain authorization for the discharge of wastewater; PENALTY: \$24,640; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(7) COMPANY: City of Kemp; DOCKET NUMBER: 2013-0229-PWS-E; IDENTIFIER: RN101244457; LOCATION: Kemp, Kaufman County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.115(f)(5) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the Maximum Contaminant Level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; and 30 TAC §290.46(f)(3)(C)(iii) and (4), by failing to submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter; PENALTY: \$325; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Mercedes; DOCKET NUMBER: 2013-0005-PWS-E; IDENTIFIER: RN101385938; LOCATION: Mercedes, Hidalgo County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform and by failing to provide public notification of the MCL exceedance for the month of October 2012; 30 TAC §290.122(c)(2), by failing to provide public notification regarding the failure to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample during the months of September 2010 and July 2012; and 30 TAC §290.122(c)(2), by failing to provide public notification regarding the failure to conduct repeat coliform monitoring during the months of September 2010 and June 2011; PENALTY: \$1,123; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: CLARA, INCORPORATED dba Chevron Clara's Store & Bakery; DOCKET NUMBER: 2012-2732-PST-E; IDENTIFIER: RN101497071; LOCATION: Smithville, Bastrop County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(d), by failing to provide release detection for the piping associated with the underground storage tank system; PENALTY: \$5,380; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78711-1808, (512) 339-2929.

(10) COMPANY: Colonial Distribution, Incorporated dba Wez Mart 1; DOCKET NUMBER: 2012-2615-PST-E; IDENTIFIER: RN101377950; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,943; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: COOK CHILDREN'S MEDICAL CENTER; DOCKET NUMBER: 2013-0015-PST-E; IDENTIFIER: RN103077483; LOCATION: Fort Worth, Tarrant County; TYPE

OF FACILITY: medical center; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Craftmasters Powder Coating, Incorporated; DOCKET NUMBER: 2012-2317-AIR-E; IDENTIFIER: RN105508436; LOCATION: Waco, McLennan County; TYPE OF FACILITY: abrasive blasting and surface coating; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain the proper authorization prior to conducting non-enclosed abrasive blasting; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Cross Development/Montgomery LP; DOCKET NUMBER: 2012-2540-PST-E; IDENTIFIER: RN101755494; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: emergency generator with underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the UST system; PENALTY: \$6,001; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: ESSEX HOSPITALITY, INCORPORATED dba Yantis Food Mart; DOCKET NUMBER: 2012-2494-PST-E; IDENTIFIER: RN102939246; LOCATION: Yantis, Wood County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: George Thomas dba Old West Mobile Home Park; DOCKET NUMBER: 2013-0029-PWS-E; IDENTIFIER: RN102316080; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample; PENALTY: \$1,883; ENFORCEMENT

COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(16) COMPANY: H Sunny, Incorporated dba Benbrook Food Mart; DOCKET NUMBER: 2012-2688-PST-E; IDENTIFIER: RN101570802; LOCATION: Benbrook, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Henry Peeples; DOCKET NUMBER: 2012-1747-LII-E; IDENTIFIER: RN106439011; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: tree trimming and landscaping business; RULE VIOLATED: 30 TAC §30.5(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; and 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing oneself to the public as a holder of a license or registration unless in possession of a current license or registration or unless employing an individual who holds a current license; PENALTY: \$1,097; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: ICT Holdings, LLC; DOCKET NUMBER: 2013-0037-AIR-E; IDENTIFIER: RN105332506; LOCATION: Littlefield, Lamb County; TYPE OF FACILITY: cotton burr processing plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to the construction and operation of a cotton burr pre-processing line; PENALTY: \$2,425; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(19) COMPANY: Ilyas Shaikh Shakoor dba Hira's Four Corner Grocery; DOCKET NUMBER: 2012-2462-PST-E; IDENTIFIER: RN102716735; LOCATION: Big Sandy, Upshur County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: JILA DEVELOPMENT, L.L.C. dba On The Road; DOCKET NUMBER: 2012-2403-PST-E; IDENTIFIER: RN101552503; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,506; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: JPPS, Incorporated dba Jacks Grocery 1; DOCKET NUMBER: 2012-2612-PST-E; IDENTIFIER: RN101732956; LOCATION: Winnie, Chambers County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: KIM'S KORNER, INCORPORATED; DOCKET NUMBER: 2013-0130-PST-E; IDENTIFIER: RN101552883; LOCATION: Melissa, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$14,301; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Leedo Manufacturing Company, L.P.; DOCKET NUMBER: 2012-2482-AIR-E; IDENTIFIER: RN100542562; LOCATION: East Bernard, Wharton County; TYPE OF FACILITY: kitchen and vanity cabinet manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O-1788, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit a semi-annual deviation report no later than 30 days after the end of the reporting period; PENALTY: \$5,437; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Luke Choi dba Belton Shell; DOCKET NUMBER: 2012-2387-PST-E; IDENTIFIER: RN101444552; LOCATION: Belton, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,568; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: MARINA QUEST, INCORPORATED; DOCKET NUMBER: 2013-0017-PWS-E; IDENTIFIER: RN102071990; LOCATION: Whitesboro, Grayson County; TYPE OF FACILITY: marina and resort with an associated public water supply system; RULE VIOLATED: 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A), by failing to collect at least one raw groundwater source *Escherichia coli* sample from the one active source within 24 hours of being notified of a distribution total coliform-positive result and by failing to provide public notice of the failure to collect a raw groundwater source *Escherichia coli* sample from each active source within 24 hours of being notified of a distribution total coliform-positive result; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A) and (f), by failing to collect at least five distribution coliform samples for the month following a total coliform-positive sample result and by failing to

provide public notification of the failure to collect five distribution samples; and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and (f), and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notice of the failure to sample; PENALTY: \$2,082; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Marshall Independent School District; DOCKET NUMBER: 2013-0101-PST-E; IDENTIFIER: RN101795623; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$8,750; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(27) COMPANY: MEMORIAL HEALTH SYSTEM OF EAST TEXAS dba Memorial Medical Center Livingston; DOCKET NUMBER: 2012-2496-PST-E; IDENTIFIER: RN105683270; LOCATION: Livingston, Polk County; TYPE OF FACILITY: hospital with an emergency back-up generator; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$13,500; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: New Jonathon Enterprise, Incorporated dba Checked Flag 11; DOCKET NUMBER: 2013-0113-PST-E; IDENTIFIER: RN101557999; LOCATION: Plano, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,565; ENFORCEMENT COORDINATOR: Margarita Dennis, (512) 827-1703; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: PECAN GROVE CAR WASH, INCORPORATED; DOCKET NUMBER: 2013-0068-PST-E; IDENTIFIER: RN104092077; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: car wash with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitor-

ing); PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Pierce Metals, LLC; DOCKET NUMBER: 2013-0311-AIR-E; IDENTIFIER: RN105632376; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: steel fabrication plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain a permit or to meet the conditions of a permit by rule prior to conducting outdoor surface coating operations; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(31) COMPANY: PLAINVIEW SERENITY CENTER, INCORPORATED; DOCKET NUMBER: 2012-2440-PWS-E; IDENTIFIER: RN105672653; LOCATION: Plainview, Hale County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the month of August 2012; 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution samples the month following a total coliform-positive result; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample collected during the month of April 2012; 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of being notified of a distribution total coliform-positive result during the month of April 2012; and 30 TAC §290.109(f)(3) and THSC, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform during the month of October 2012; PENALTY: \$900; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(32) COMPANY: Ram/Taha, LLC dba Diamond Mini Mart; DOCKET NUMBER: 2013-0382-PST-E; IDENTIFIER: RN102427697; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(33) COMPANY: Ramanlal T. Patel dba The Junction; DOCKET NUMBER: 2012-2512-PST-E; IDENTIFIER: RN102790656; LOCATION: Winnsboro, Wood County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(34) COMPANY: Rentech Nitrogen Pasadena, LLC; DOCKET NUMBER: 2013-0012-AIR-E; IDENTIFIER: RN101621944; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: sulfuric acid plant; RULE VIOLATED: 30 TAC §116.115(c), TCEQ Permit Number 56361, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,563; ENFORCEMENT COORDINATOR: Nadia

Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: RTF, L.L.C. dba Calliham Store; DOCKET NUMBER: 2012-2498-PST-E; IDENTIFIER: RN101433803; LOCATION: Calliham, McMullen County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; PENALTY: \$3,133; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(36) COMPANY: Sac-N-Pac Stores, Incorporated dba Sac N Pac 601; DOCKET NUMBER: 2013-0364-PST-E; IDENTIFIER: RN102928553; LOCATION: Canyon Lake, Comal County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$6,625; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(37) COMPANY: SJTS, Incorporated dba Shop N Go; DOCKET NUMBER: 2012-2420-PST-E; IDENTIFIER: RN104805593; LOCATION: Lone Star, Morris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain all UST records and making them immediately available upon request by agency personnel; PENALTY: \$7,942; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(38) COMPANY: SNB Food, Incorporated dba Speedy Stop Super Mart 2; DOCKET NUMBER: 2013-0034-PST-E; IDENTIFIER: RN102393576; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$8,750; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(39) COMPANY: Texas Petroleum Group, LLC dba Shell Retail Facility; DOCKET NUMBER: 2013-0276-PST-E; IDENTIFIER: RN102357209; LOCATION: Humble, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$6,323; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.



(40) COMPANY: TEX-S, L.L.C.; DOCKET NUMBER: 2010-1135-AGR-E; IDENTIFIER: RN102755071; LOCATION: Hico, Hamilton County; TYPE OF FACILITY: dairy farm; RULE VIOLATED: 30 TAC §321.46(b)(10) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0003640000, VII. Pollution Prevention Plan (PPP) Requirements A.11(f) and C.3, by failing to maintain records of employee training; 30 TAC §321.36(c) and TPDES Permit Number WQ0003640000, IX. Standard Permit Conditions E., by failing to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the design rainfall event; 30 TAC §321.46(c)(2) and TPDES Permit Number WQ0003640000, VII. PPP Requirements A.10(a)(5), by failing to conduct the annual site inspection of the production area and land management units; 30 TAC §321.36(h)(1) and TPDES Permit Number WQ0003640000, VII. PPP Requirements A.10(a)(1), by failing to maintain records of daily inspections on all water lines; 30 TAC §305.125(1) and §321.40(k)(2) and TPDES Permit Number WQ0003640000, VII. PPP Requirements A.8(c)(2), by failing to cease land application of wastewater when sample results showed an extractable phosphorus level of greater than 200 parts per million in Zone 1, unless the application is implemented in accordance with a detailed nutrient utilization plan; and 30 TAC §321.36(j) and TPDES Permit Number WQ0003640000, VIII. Recordkeeping, Reporting, and Notification Requirements B.7 and X. Special Provisions C, by failing to submit a complete annual report to the TCEQ by February 15, 2010; PENALTY: \$5,723; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(41) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2012-2015-IHW-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §335.221(a)(6), 40 Code of Federal Regulations (CFR) §266.102(e)(1) and (2)(ii)(A) and §266.104(b)(1), and Hazardous Waste Permit Number 50161, Provision V.I.3.b.i, by failing to meet the regulatory limit for the stack gas concentration of 100 parts per million by volume of carbon monoxide while burning hazardous waste in Boiler FTB-210 (Notice of Registration (NOR) Unit Number 154); 30 TAC §335.221(a)(6), 40 CFR §266.102(e)(8)(iv), and Hazardous Waste Permit Number 50161, Provision V.I.7.d., by failing to perform operational testing on the automatic waste feed cutoff system for Boiler FTB-210 (NOR Unit Number 154); 30 TAC §335.69(a)(1)(A) and 40 CFR §265.174, by failing to document weekly inspections of container storage areas; and 30 TAC §335.69(a)(1)(B) and 40 CFR §265.195(g), by failing to document daily inspections of hazardous waste tank systems; PENALTY: \$51,380; Supplemental Environmental Project offset amount of \$20,552 applied to Friends of the River San Bernard Natural Area Acquisition and Conservation Program; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(42) COMPANY: TIMBER FOREST CHEVRON, INCORPORATED; DOCKET NUMBER: 2012-2536-PST-E; IDENTIFIER: RN101435733; LOCATION: Humble, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(43) COMPANY: UPSHUR-RURAL ELECTRIC COOPERATIVE CORPORATION; DOCKET NUMBER: 2012-2352-PST-E; IDENTIFIER: RN101749497; LOCATION: Gilmer, Upshur County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(44) COMPANY: VERMA ENTERPRISES, INCORPORATED dba Corner Mart; DOCKET NUMBER: 2013-0188-PST-E; IDENTIFIER: RN101435477; LOCATION: Hughes Springs, Cass County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the USTs; PENALTY: \$2,942; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(45) COMPANY: William Marsh Rice University; DOCKET NUMBER: 2012-2685-PST-E; IDENTIFIER: RN100245968; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank (UST); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$4,038; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201301690

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 30, 2013



#### April 2013 Draft Water Quality Management Plan Update

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft April 2013 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) updates.

A copy of the draft April 2013 WQMP update may be found on the commission's Web site located at [http://www.tceq.texas.gov/permitting/wqmp/WQmanagement\\_updates.html](http://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html). A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on June 10, 2013. For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at [Nancy.Vignali@tceq.texas.gov](mailto:Nancy.Vignali@tceq.texas.gov).

TRD-201301691

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 30, 2013



### Enforcement Orders

An agreed order was entered regarding City of Gregory, Docket No. 2011-0152-MWD-E on April 22, 2013, assessing \$15,318 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lamberti USA, Incorporated, Docket No. 2011-1264-IWD-E on April 22, 2013, assessing \$64,129 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BAYOU DEVELOPMENT, LLC, Docket No. 2011-1265-MWD-E on April 22, 2013, assessing \$6,004 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Inderjeet Dhillon dba Kwik Pick, Docket No. 2011-2095-PST-E on April 22, 2013, assessing \$12,708 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bob King's Truck Beds, LLC dba Kings Truck Beds, Docket No. 2011-2252-AIR-E on April 22, 2013, assessing \$30,420 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alon USA, LP, Docket No. 2012-0356-IWD-E on April 22, 2013, assessing \$17,830 in administrative penalties with \$3,566 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZAKI SON INC, Docket No. 2012-0510-PST-E on April 22, 2013, assessing \$14,439 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alice Michelle Chapa dba Mikes Market, Docket No. 2012-0536-PST-E on April 22, 2013, assessing \$23,651 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paul K. Hawkins, Docket No. 2012-0605-LII-E on April 22, 2013, assessing \$861 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2012-0624-AIR-E on April 22, 2013, assessing \$20,251 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marathon Petroleum Company LP, Docket No. 2012-0685-AIR-E on April 22, 2013, assessing \$32,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amy Nguyen dba Henderson Drive In, Docket No. 2012-0748-PST-E on April 22, 2013, assessing \$8,881 in administrative penalties with \$1,776 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Olney, Docket No. 2012-0808-MWD-E on April 22, 2013, assessing \$72,363 in administrative penalties with \$72,363 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals Refining USA, Inc., Docket No. 2012-0821-AIR-E on April 22, 2013, assessing \$202,600 in administrative penalties with \$40,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Senna Hills Municipal Utility District and Senna Hills, Ltd., Docket No. 2012-0889-MWD-E on April 22, 2013, assessing \$11,986 in administrative penalties with \$2,397 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Harlingen Waterworks System, Docket No. 2012-0893-MWD-E on April 22, 2013, assessing \$16,362 in administrative penalties with \$3,272 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Laredo, Docket No. 2012-1063-MWD-E on April 22, 2013, assessing \$1,233 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Whitney, Docket No. 2012-1084-MWD-E on April 22, 2013, assessing \$7,820 in administrative penalties with \$1,564 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Arlington, Docket No. 2012-1267-WQ-E on April 22, 2013, assessing \$7,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hereford, Docket No. 2012-1275-MWD-E on April 22, 2013, assessing \$10,499 in administrative penalties with \$2,099 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMK Properties LLC dba Amigos Fuel Center, Docket No. 2012-1279-PST-E on April 22, 2013, assessing \$17,005 in administrative penalties with \$3,401 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Megargel, Docket No. 2012-1289-PWS-E on April 22, 2013, assessing \$1,104 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gonzales Retailers, LLC dba St Joseph Food Mart, Docket No. 2012-1339-PST-E on April 22, 2013, assessing \$9,549 in administrative penalties with \$1,909 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clifford Clyde Kitten, L.P. dba South Garza Water Supply Corporation, Docket No. 2012-1366-PWS-E on April 22, 2013, assessing \$504 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LONE STAR DISTRIBUTORS, INC. dba Hectors Drive In, Docket No. 2012-1386-PST-E on April 22, 2013, assessing \$12,781 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shahab, Inc. dba Cowboys 11, Docket No. 2012-1402-PST-E on April 22, 2013, assessing \$9,247 in administrative penalties with \$1,849 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenneth Mock and Thomas Mock dba Mock's Grocery, Docket No. 2012-1438-PST-E on April 22, 2013, assessing \$8,507 in administrative penalties with \$1701 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Happyle Corporation dba Melbos Food Store, Docket No. 2012-1466-PST-E on April 22, 2013, assessing \$7,632 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JANG CO. INC. dba Ace Mart 1, Docket No. 2012-1509-PST-E on April 22, 2013, assessing \$31,975 in administrative penalties with \$6,395 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D K Development Corp., Docket No. 2012-1519-MWD-E on April 22, 2013, assessing \$4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atlas Roofing Corporation, Docket No. 2012-1556-AIR-E on April 22, 2013, assessing \$16,163 in administrative penalties with \$3,232 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.V. Texas Cooler, LLC dba Texas Cooler, Docket No. 2012-1593-PST-E on April 22, 2013, assessing \$15,000 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ranger Gas Gathering, L.L.C., Docket No. 2012-1605-AIR-E on April 22, 2013, assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EXXON MOBIL CORPORATION, Docket No. 2012-1630-IHW-E on April 22, 2013, assessing \$20,000 in administrative penalties with \$4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Midway, Docket No. 2012-1634-MWD-E on April 22, 2013, assessing \$10,540 in administrative penalties with \$2,108 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OB-GYN and Anaesthesia Associates, P.A., Docket No. 2012-1686-EAQ-E on April 22, 2013, assessing \$9,500 in administrative penalties with \$1,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Multi-Chem Group, LLC, Docket No. 2012-1753-MLM-E on April 22, 2013, assessing \$15,562 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Miami, Docket No. 2012-1758-MWD-E on April 22, 2013, assessing \$16,070 in administrative penalties with \$3,214 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2012-1772-AIR-E on April 22, 2013, assessing \$25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding American Marazzi Tile, Inc., Docket No. 2012-1795-AIR-E on April 22, 2013, assessing \$9,576 in administrative penalties with \$1,915 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Fuel Energy Corporation, Docket No. 2012-1815-PST-E on April 22, 2013, assessing \$10,010 in administrative penalties with \$2,002 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Del Rio, Docket No. 2012-1914-MSW-E on April 22, 2013, assessing \$18,750 in administrative penalties with \$3,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gary Wayne Ashby dba Brady's Great BBQ, Docket No. 2012-1918-PWS-E on April 22, 2013, assessing \$2,904 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Mission Glen Municipal Utility District, Docket No. 2012-1924-MWD-E on April 22, 2013, assessing \$41,249 in administrative penalties with \$8,249 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DOUGLASS DISTRIBUTING COMPANY dba Lone Star 97, Docket No. 2012-1965-PST-E on April 22, 2013, assessing \$7,779 in administrative penalties with \$1,555 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lower Colorado River Authority dba Lometa Regional Water, Docket No. 2012-1974-PWS-E on April 22, 2013, assessing \$345 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2012-1975-AIR-E on April 22, 2013, assessing \$8,300 in administrative penalties with \$1,660 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding East Marion County Water Supply Co, Docket No. 2012-2008-PWS-E on April 22, 2013, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CALIFORNIA WAREHOUSE, INC. dba Kingsland Food Mart, Docket No. 2012-2042-PST-E on April 22, 2013, assessing \$7,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W.T. Byler Co., Inc., Docket No. 2011-0995-AIR-E on April 24, 2013, assessing \$8,672 in administrative penalties with \$1,734 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SHEZ Inc dba Getty Food Mart, Docket No. 2011-2116-PST-E on April 24, 2013, assessing \$7,609 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Los Ebanos Land Cattle Company, LLC, Docket No. 2011-2190-MSW-E on April 24, 2013, assessing \$15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Blanket, Docket No. 2011-2220-MWD-E on April 24, 2013, assessing \$7,257 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Thomas Pankratz dba Shady Rest Mobile Home Park, Docket No. 2012-0415-PWS-E on April 24, 2013, assessing \$3,489 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Carrizo Springs, Docket No. 2012-0513-MSW-E on April 24, 2013, assessing \$20,165 in administrative penalties with \$4,033 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding SUNSHINE STORES, INC. dba Sunshine Truck Stop, Docket No. 2012-0955-PST-E on April 24, 2013, assessing \$20,334 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Vicki Helsel dba Bootsies, Docket No. 2012-1028-PST-E on April 24, 2013, assessing \$8,883 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bullard, Docket No. 2012-1062-MWD-E on April 24, 2013, assessing \$15,600 in administrative penalties with \$3,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2012-1177-MWD-E on April 24, 2013, assessing \$13,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magellan Terminals Holdings, L.P., Docket No. 2012-1333-IWD-E on April 24, 2013, assessing \$7,409 in administrative penalties with \$1,481 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jeff A. Arbogust, Docket No. 2012-1513-LII-E on April 24, 2013, assessing \$1,393 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COTULLA FISH HATCHERY, LLC, Docket No. 2012-1533-PWS-E on April 24, 2013, assessing \$1,863 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Amtul Enterprises, Inc. dba Cross Country, Docket No. 2012-1557-PST-E on April 24, 2013, assessing \$7,630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KMCO, LLC, Docket No. 2012-1602-AIR-E on April 24, 2013, assessing \$35,370 in administrative penalties with \$7,074 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines (Texas Gathering) L.P., Docket No. 2012-1676-AIR-E on April 24, 2013, assessing \$11,053 in administrative penalties with \$2,210 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Afshan Iftikhar Enterprises, Inc. dba Rite Track 15, Docket No. 2012-1695-PST-E on April 24, 2013, assessing \$8,750 in administrative penalties with \$1,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nakisa Enterprises, LLC dba Mayhill Food Mart, Docket No. 2012-1708-PST-E on April 24, 2013, assessing \$35,800 in administrative penalties with \$7,160 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf West Landfill TX, LP, Docket No. 2012-1713-IHW-E on April 24, 2013, assessing \$9,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHEVRON PHILLIPS CHEMICAL COMPANY LP, Docket No. 2012-1824-MLM-E on April 24, 2013, assessing \$32,813 in administrative penalties with \$6,562 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magnificent Investment, Inc. dba JG Food Mart, Docket No. 2012-1832-PST-E on April 24, 2013, assessing \$7,632 in administrative penalties with \$1,526 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donny Burnett dba East Texas Crushed Rock, Docket No. 2012-1840-AIR-E on April 24, 2013, assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NCI Group, Inc., Docket No. 2012-1847-AIR-E on April 24, 2013, assessing \$12,863 in administrative penalties with \$2,572 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kul Devi Enterprises Inc. dba Super Food Mart 23, Docket No. 2012-1857-PST-E on April 24, 2013, assessing \$8,005 in administrative penalties with \$1,601 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lhoist North America of Texas, Ltd., Docket No. 2012-1862-AIR-E on April 24, 2013, assessing \$15,075 in administrative penalties with \$3,015 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas A&M University, Docket No. 2012-1897-AIR-E on April 24, 2013, assessing \$8,250 in administrative penalties with \$1,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOODSPRINGS WATER SUPPLY CORPORATION, Docket No. 2012-1928-PWS-E on April 24, 2013, assessing \$172 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Noma Kathaleen Hill dba Leaning Oaks Mobile Home Park, Docket No. 2012-1961-PWS-E on April 24, 2013, assessing \$2,251 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ramon C. Gonzales, Jr. dba South Midland County Water Systems, Docket No. 2012-1973-PWS-E on April 24, 2013, assessing \$1,307 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lehigh Cement Company LLC, Docket No. 2012-1983-AIR-E on April 24, 2013, assessing \$7,613 in administrative penalties with \$1,522 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air Liquide Large Industries U.S. LP, Docket No. 2012-1992-AIR-E on April 24, 2013, assessing \$10,800 in administrative penalties with \$2,160 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LEIBOLD-GROTHUES RANCH, LTD. dba Lake Medina RV Resort, Docket No. 2012-2039-PWS-E on April 24, 2013, assessing \$2,223 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2012-2074-AIR-E on April 24, 2013, assessing \$14,250 in administrative penalties with \$2,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding JBTB Investments I, Ltd., Docket No. 2012-2136-EAQ-E on April 24, 2013, assessing \$7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valley Municipal Utility District No. 2, Docket No. 2012-2176-MWD-E on April 24, 2013, assessing \$14,200 in administrative penalties with \$2,840 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Marlin, Docket No. 2012-2319-PWS-E on April 24, 2013, assessing \$804 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Beverly Minaldi dba Timberlane Water System, Docket No. 2011-1089-MLM-E on April 24, 2013, assessing \$5,269 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sue Allen, Docket No. 2012-0111-MSW-E on April 24, 2013, assessing \$6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coastal King Operations, Inc. dba Whistle Stop 2, Docket No. 2012-0489-PST-E on April 24, 2013, assessing \$3,880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cotulla Fish Hatchery, LLC, Docket No. 2012-0630-MLM-E on April 24, 2013, assessing \$1,785 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FAMIS Corporation dba Famis Food Mart, Docket No. 2012-0763-PST-E on April 24, 2013, assessing \$2,633 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C.O. Jones Enterprises, L.L.C. dba Triangle Market, Docket No. 2012-0909-PST-E on April 24, 2013, assessing \$6,166 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALMEDA PLAZA, INC. dba Sunny's Food Store, Docket No. 2012-0944-PST-E on April 24, 2013, assessing \$2,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cullen McMorrow, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eshaan Retail Group Inc dba Texans Texaco, Docket No. 2012-1376-PST-E on April 24, 2013, assessing \$3,763 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JSTH INVESTMENTS, INC. dba JR Food Mart 7, Docket No. 2012-1667-PST-E on April 24, 2013, assessing \$4,505 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUPREME BUSINESS, INC. dba Fuel Expo 1, Docket No. 2012-1787-PST-E on April 24, 2013, assessing \$6,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David M Chandler, Inc., Docket No. 2012-1976-PWS-E on April 24, 2013, assessing \$565 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donald S. Fletcher dba Equestrian Estates, Docket No. 2012-2089-PWS-E on April 24, 2013, assessing \$1,808 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ELIM GAS STATION CORPORATION dba Speed Max 4, Docket No. 2012-2278-PST-E on April 24, 2013, assessing \$4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201301717

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 1, 2013



#### Notice of Minor Amendment, Radioactive Material License Number R04971

APPLICATION. Waste Control Specialists LLC, P.O. Box 1129, Andrews, Texas 79714 has applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment of Radioactive Material License No. R04971. Radioactive Material License No. R04971 authorizes receipt of radioactive waste from other persons and processing and storage of radioactive waste. Waste Control Specialists LLC (WCS) stores and processes radioactive waste. The amendment applications requested to establish a framework pursuant to 30 TAC §336.5(a) to exempt specific waste streams - whose waste form, physical properties, volume, and concentration values have been demonstrated in a radiological impact assessment not to result in a significant risk to public health and safety or the environment - and to dispose of the exempted waste in the Licensee's RCRA disposal unit; incorporate the bioassay program approved under the Licensee's Radioactive Mate-

rial License R04100 into this license; and change the Radiation Safety Officer. The facility is located at 9998 State Highway 176 West, Andrews, Andrews County, Texas 79714, approximately one mile north of State Highway 176, 250 feet east of the Texas and New Mexico State Line (30 miles west of Andrews, Texas). The applications were submitted to the TCEQ on February 22, 2013, March 1, 2013, and March 14, 2013.

The following link to an electronic map of the facility's general location is provided as a public courtesy and is not part of the application or notice:

<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.4425&lng=-103.063055&zoom=13&type>.

For an exact location, refer to the application.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft license. The draft license, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The license amendment request, the Executive Director's technical summary, and amended draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas, and at the Andrews County Library located at 109 Northwest First Street in Andrews, Texas.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments.

EXECUTIVE DIRECTOR ACTION. The application is subject to Commission rules which direct the Executive Director to act on behalf of the Commission and provide authority to the Executive Director to issue final approval on this application for a minor amendment after consideration of all timely comments submitted on the application.

MAILING LIST. If you submit public comments or a request for reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html) within 10 days from the date of the *Texas Register* publication or within 10 days after the notice is mailed, whichever is later.

AGENCY CONTACTS AND INFORMATION. If you need more information about this license application or the licensing process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Further information may also be obtained from Waste Control Specialists LLC at Three Lincoln Center, 5430 LBJ



Freeway, Suite 1700, Dallas, Texas 75240 or by contacting Mr. Scott Kirk at (888) 789-2783 or (432) 525-8500.

TRD-201301716

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 1, 2013



## Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 10, 2013**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400, and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 10, 2013**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: ASUDA HOLDINGS LLC d/b/a 7-Eleven; DOCKET NUMBER: 2012-1297-PST-E; TCEQ ID NUMBER: RN101532281; LOCATION: 3976 Rosemeade Parkway, Dallas, Denton County; TYPE OF FACILITY: underground storage tank system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; and 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery; PENALTY: \$27,100; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Barrett Street Partners, Inc. d/b/a Pearl Signature Cleaners; DOCKET NUMBER: 2012-1646-DCL-E; TCEQ ID NUMBER: RN102178969; LOCATION: 2545 Blue Willow Drive, Houston, Harris County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: Texas Health and Safety Code, §374.102 and 30 TAC §337.11(e), by failing to renew a facility's registration by completing and submitting the required registration form to the TCEQ for a dry

cleaning facility; PENALTY: \$512; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: BJT Properties, Inc.; DOCKET NUMBER: 2012-2455-AIR-E; TCEQ ID NUMBER: RN100222157; LOCATION: 1301 North Blue Creek Road, El Campo, Wharton County; TYPE OF FACILITY: cabinet manufacturing plant; RULES VIOLATED: Texas Health and Safety Code, §382.085(b), 30 TAC §122.143(4) and §122.146(2), and Federal Operating Permit Number 01083, General Terms and Conditions, by failing to submit a permit compliance certificate within 30 days after the end of the certification period; PENALTY: \$3,075; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: D. TRAN, INC. d/b/a Manns Chevron 2; DOCKET NUMBER: 2012-1035-PST-E; TCEQ ID NUMBER: RN102260213; LOCATION: 2707 Northeast Loop 410, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,500; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Eric Blakely; DOCKET NUMBER: 2012-1956-LII-E; TCEQ ID NUMBER: RN106457484; LOCATION: 5868 Westheimer Road, Suite 221, Houston, Harris County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; PENALTY: \$947; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Marbach Food, Inc. d/b/a Marbach Grocery; DOCKET NUMBER: 2012-2096-PST-E; TCEQ ID NUMBER: RN102378734; LOCATION: 9385 Marbach Road, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; and TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failing to provide proper release detection for the piping associated with the UST system; PENALTY: \$7,632; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: New Caney Enterprise, Inc. d/b/a Bills 3Gs Food Mart; DOCKET NUMBER: 2012-2337-PST-E; TCEQ ID NUMBER: RN101879716; LOCATION: 23550 Farm-to-Market Road 1485, New Caney, Montgomery County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between

each monitoring); and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: \$8,063; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: NOORI INVESTMENTS, INC. d/b/a Kens Bread & Butter; DOCKET NUMBER: 2012-2312-PST-E; TCEQ ID NUMBER: RN102270485; LOCATION: 34703 State Highway 249, Pinehurst, Montgomery County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,900; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Pronto Food Stores, LLC; DOCKET NUMBER: 2012-1913-PST-E; TCEQ ID NUMBER: RN102719226; LOCATION: 801 South Commerce Street, Overton, Rusk County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the UST system; PENALTY: \$11,135; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Stephen M. Mogonye; DOCKET NUMBER: 2012-1320-LII-E; TCEQ ID NUMBER: RN105733034; LOCATION: 13905 Hatcherville Road, Baytown, Harris County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.35(d)(5) and §344.38, by failing to maintain archival copies of landscape irrigation records; and 30 TAC §344.35(d)(12) and §344.63(4), by failing to provide the homeowner with a design plan for the irrigation system that was installed on June 21, 2011, at 1014 Cleistes Lane, Richmond, Fort Bend County; PENALTY: \$525; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: SUHA ENTERPRISES INC d/b/a Diamond Food Mart; DOCKET NUMBER: 2012-2460-PST-E; TCEQ ID NUMBER: RN101781862; LOCATION: 3098 East Commerce Street, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system by failing to conduct the annual piping and line leak detector tests; PENALTY: \$3,879; STAFF ATTORNEY:

Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201301693

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 30, 2013



## Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 10, 2013**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 10, 2013**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Craig Sailer d/b/a Outdoor Unlimited; DOCKET NUMBER: 2012-2079-LII-E; TCEQ ID NUMBER: RN103768420; LOCATION: 22608 Main Boulevard, Tomball, Harris County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to obtain an irrigator license prior to installing an irrigation system; PENALTY: \$936; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Derby Water Supply Corporation; DOCKET NUMBER: 2012-1958-MLM-E; TCEQ ID NUMBER: RN101281178; LOCATION: the Southeast corner of the intersection of County Road

3415 and County Road 3428, Moore, Frio County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.46(f)(2) and (3)(A)(ii)(III), by failing to make water works operation and maintenance records available for review by commission personnel; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.46(m)(1)(A), by failing to conduct annual inspections of the ground storage tank (GST) at the facility; 30 TAC §290.46(m)(1)(B), by failing to conduct annual inspections of the pressure tank at the facility; 30 TAC §290.46(n)(3), by failing to provide well completion data for the well at the facility; 30 TAC §290.42(l), by failing to maintain a thorough up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(m) and (m)(6), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of facilities and equipment; 30 TAC §290.41(c)(3)(K), by failing to provide a 16-gauge mesh or finer corrosion-resistant screen on the well casing vent; 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for the purpose of microbiological control and distribution protection at the facility; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contain the name of the facility and emergency telephone numbers where a responsible facility official can be contacted; 30 TAC §290.43(c)(4), by failing to provide the GST with a liquid level indicator at the tank site; Texas Health and Safety Code, §341.033(a) and 30 TAC 290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator that holds a Class "D" or higher license; 30 TAC §290.41(c)(3)(O), by failing to enclose the well with an intruder-resistant fence with a lockable gate or a locked and ventilated well house; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (iv), (B)(i), (iii), (D)(i) and (E)(ii), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; and 30 TAC §290.46(m) and (m)(6), failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of facilities and equipment; PENALTY: \$4,712; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Doris Brown, aka Doris Blue Brown, aka Doris Blue, aka Doris Bryant; DOCKET NUMBER: 2013-0090-MLM-E; TCEQ ID NUMBER: RN106373954; LOCATION: 8960 Farm-to-Market Road 485 East, Cameron, Milam County; TYPE OF FACILITY: residential property; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; and Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by failing to comply with the general prohibition on outdoor burning; PENALTY: \$2,729; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Dustin Borrego dba Apache Services; DOCKET NUMBER: 2012-1756-SLG-E; TCEQ ID NUMBER: RN105029417; LOCATION: 14803 Hermit Thrush Drive, Tomball, Montgomery County; TYPE OF FACILITY: unregistered sludge transporter; RULES VIOLATED: 30 TAC §312.142(d), by failing to maintain authorization to transport septic tank waste; and 30 TAC §312.145(b)(4), by failing to submit to the executive director an annual summary of respondent's activities for the period of June 1 - May 31 of each year, by July 1; PENALTY: \$11,359; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE:

Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Jaspal Singh Grewal; DOCKET NUMBER: 2011-1298-PST-E; TCEQ ID NUMBER: RN101556728; LOCATION: 220 Farm-to-Market Road 1417, Sherman, Grayson County; TYPE OF FACILITY: underground storage tank (UST) system and truck stop; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the piping associated with the UST system by failing to conduct the annual piping tightness test; PENALTY: \$15,634; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Precision Processing Inc., Michael Smith, and Theresa Smith; DOCKET NUMBER: 2011-0311-MSW-E; TCEQ ID NUMBER: RN101479178; LOCATION: 1.3 miles West of State Highway 152/Farm-to-Market Road 2171, 1,000 feet South of State Highway 152, Borger, Hutchison County; TYPE OF FACILITY: landfill; RULES VIOLATED: 30 TAC §§330.165(f), 330.453, and 330.461, by failing to provide adequate final cover for a municipal solid waste (MSW) landfill, by failing to comply with closure requirements, and failing to certify final closure of the landfill; and TWC, §26.121(a) and 30 TAC §330.15(a)(1), by failing to prevent the unauthorized discharge of MSW from the facility; PENALTY: \$8,500; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (403) 403-4023; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(7) COMPANY: Randy L. Snapp d/b/a Fredericksburg Kampgrounds Of America; DOCKET NUMBER: 2012-2128-PWS-E; TCEQ ID NUMBER: RN101257129; LOCATION: 5681 East United States Highway 290, Fredericksburg, Gillespie County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.122(c)(2)(B), by failing to provide public notification for the failure to collect routine distribution water samples for the month of April 2011; 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite monitoring to the executive director for the January 1, 2011 - December 31, 2011, monitoring period; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample for the month of April 2012, and failing to provide public notification of the failure to sample; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(B), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of being notified of a distribution total coliform-positive result on a routine sample for the month of April 2012, and failing to provide public notification of the failure to collect one raw groundwater source sample; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing

to collect at least five routine distribution samples the month following a total coliform-positive result and failing to provide public notification of the failure to sample for the month of May 2012; and TWC, §5.702 and 30 TAC §290.51(a)(3), by failing to pay all annual Public Health Service fees, including associated late fees and penalties, for TCEQ Financial Administration Account Number 90860003; PENALTY: \$968; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: William Bartley Duncan; DOCKET NUMBER: 2012-2163-MLM-E; TCEQ ID NUMBER: RN106435886; LOCATION: 5112 Old Lufkin Road, Nacogdoches, Nacogdoches County; TYPE OF FACILITY: scrap metal recycling and salvage facility; RULES VIOLATED: 30 TAC §324.6 and 40 Code of Federal Regulations §279.22(d), by failing to perform cleanup actions upon detection of a release of used oil; and 30 TAC §324.56(d)(4), by failing to monitor tires stored outside for vectors and utilize appropriate vector control at the facility at least once every two weeks; PENALTY: \$1,049; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201301694  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: April 30, 2013



#### Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 10, 2013**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of

changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 10, 2013**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Ashok K. Sharma d/b/a A-1 Mart; DOCKET NUMBER: 2011-0744-PST-E; TCEQ ID NUMBER: RN102010097; LOCATION: 6800 Camp Bowie West Boulevard, Fort Worth, Tarrant County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$3,769; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: J.S. BASSI ENTERPRISES INC d/b/a OAK GROVE STORE 2; DOCKET NUMBER: 2012-1439-PST-E; TCEQ ID NUMBER: RN101444545; LOCATION: 301 East Sam Rayburn Drive, Bonham, Fannin County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the piping associated with the UST system; PENALTY: \$3,882; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Mustafa Chagani d/b/a Daghlaz Mart; DOCKET NUMBER: 2012-2129-PST-E; TCEQ ID NUMBER: RN102457850; LOCATION: 5050 Airport Freeway, Haltom City, Tarrant County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST; TWC, §26.3475(d) and 30 TAC §334.49(a), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the product piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$16,824; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: REED OIL CO.; DOCKET NUMBER: 2012-1685-PST-E; TCEQ ID NUMBER: RN101888410; LOCATION: 615 Main Street, Byers, Clay County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §335.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$3,500; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Sona Stores, Inc. d/b/a Sunshine Grocery and d/b/a Sunshine Groceries; DOCKET NUMBER: 2012-0315-PST-E; TCEQ ID NUMBER: RN102478468 and RN102789138; LOCATION: North side of the intersection of Highway 190 and Farm-to-Market Road 1416, Bon Wier, Newton County (facility 1) and 42338 South Texas State Highway 87, Deweyville, Newton County (facility 2); TYPE OF FACILITY: UST systems and two convenience stores with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs at facility 1 for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs at facility 2 for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the piping associated with the UST system at facility 2; PENALTY: \$5,133; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201301692

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 30, 2013



#### Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 115 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive testimony regarding proposed amendments to 30 Texas Administrative Code (TAC) Chapter 115, §§115.240, 115.242 - 115.246; new §115.241; and repeal of §§115.241, 115.247, and 115.249, and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking would revise Chapter 115, Subchapter C, Division 4 to specify that new gasoline dispensing facilities are not required to install Stage II equipment and require existing gasoline dispensing facilities in the current program areas to properly decommission existing Stage II equipment no later than August 31, 2018. Gasoline dispensing facilities electing to retain Stage II equipment until the mandatory removal date of August 31, 2018 would be required to comply with current Stage II rules.

The commission will hold public hearings on this proposal in: El Paso, Texas on Tuesday, May 28, 2013, at the El Paso Public Library, Audi-

torium, located at 501 N. Oregon; Beaumont, Texas on Thursday, May 30, 2013, at the TCEQ Region 10 Office, located at 3870 Eastex Freeway; Houston, Texas on Friday, May 31, 2013, at the Houston Galveston Area Council, 2nd Floor Room A, located at 3555 Timmons; in Arlington, Texas on Monday, June 3, 2013, in the Arlington City Council Chamber, located at 101 W. Abram Street; and in Austin Texas on Tuesday, June 4, 2013, at the TCEQ Central Office, Building E, Room 201. All hearings will begin at 2:00 p.m. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-001-115-AI. The comment period closes June 10, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Santos Olivarez, (512) 239-4718.

TRD-201301665

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 26, 2013



#### Notice of Water Quality Applications

The following notices were issued on April 19, 2013 through April 26, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

#### INFORMATION SECTION

JOHANN HALTERMANN LTD which operates Johann Haltermann - Jacintoport Facility, a facility that primarily recovers saleable products from off-specification petroleum products and solvents by fractional distillation and occasionally manufactures organic compounds, has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002458000 to authorize the discharge of consisting of sand filter backwash, cooling tower blow-down, and water softener backflush on an intermittent and flow variable basis via Outfall 002. The existing permit authorizes the discharge of treated process wastewater, utility wastewater, domestic wastewater, and stormwater at a daily average flow not to exceed 220,000 gallons per day and a daily maximum flow not to exceed 440,000 gallons per day via Outfall 001; stormwater on an intermittent and flow variable basis via Outfall 002; and non-contact heating water on an intermittent

and flow variable basis via Outfall 003. The facility is located at 16717 Jacintoport Boulevard on the north bank of the Houston Ship Channel, approximately 1.6 miles east of the intersection of Sheldon Road and Jacintoport Boulevard, near the Community of Channelview, Harris County, Texas 77015. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

TERRA RENEWAL SERVICES INC has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TCEQ Permit No. WQ0004830000, which authorizes the land application of sewage sludge and water treatment plant sludge for beneficial use. The current permit authorizes land application of sewage sludge and water treatment plant sludge for beneficial use on 289.4 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge land application site is located adjacent to the east side of Farm-to-Market Road 2276, extending from approximately 300 feet north of the intersection of Farm-to-Market Road 2276 and Farm-to-Market Road 2204, northward to approximately 600 feet south of the intersection of Farm-to-Market Road 2276 and Farm-to-Market Road 349, approximately 1.5 miles east of the City of Kilgore, in Gregg County, Texas 75662.

NEW BRAUNFELS UTILITIES has applied for a new permit, proposed TPDES Permit No. WQ0010232004, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 9,900,000 gallons per day. The facility will be located approximately 4.0 miles southeast of the City of New Braunfels, 0.7 mile southwest of the intersection of State Highway 46 and Elley Lane, and 0.6 mile downstream from the Lake Dunlap Dam on the Guadalupe River in Guadalupe County, Texas 78130.

CITY OF LINDALE has applied for a renewal of TPDES Permit No. WQ0010412002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 72,000 gallons per day. The facility is located adjacent to Interstate Highway 20 approximately 0.9 mile west of the intersection of Interstate Highway 20 and County Road 463 in Smith County, Texas 75771.

MAYDE CREEK MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011969001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 19702 Morton Road, approximately one mile south of Clay Road and 0.5 mile east of Fry Road, Katy, in Harris County, Texas 77449.

CITY OF MORGAN has applied for a renewal of TPDES Permit No. WQ0012217002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 0.5 mile south of the intersection of Farm-to-Market Road 927 and State Highway 174 on State Highway 174 in Bosque County, Texas 76671.

STEAMBOAT SHORES OWNERS ASSOCIATION has applied for a renewal of TPDES Permit No. WQ0013659001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 13,500 gallons per day. The facility is located at 2 Steamboat Shores, on the south bank of Lake Fork Reservoir between Penson Spring Branch and Boardtree Branch, approximately 1.2 miles north of the intersection of Farm-to-Market Road 2946 and Farm-to-Market Road 515 in Rains County, Texas 75440.

DOUBLE DIAMOND UTILITIES CO has applied for a renewal of TPDES Permit No. WQ0013786002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on Misty Valley Circle,

off White Bluff Drive, 2.5 miles northwest of the intersection of Farm-to-Market Road 933 and Farm-to-Market Road 2604 in Hill County, Texas 76692.

BOLIVAR UTILITY SERVICES LLC has applied for a renewal of TPDES Permit No. WQ0014452001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 1329 29th Street, Galveston, approximately 0.25 mile north and 0.9 mile west of the intersection of State Highway 87 and Broadway Avenue (Loop 108) in Galveston County, Texas 77650.

COLUMBIA BRAZORIA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0014893001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located at 3311 County Road 353, approximately one mile south of State Highway 36 from a point approximately 4.5 miles southeast of the City of West Columbia in Brazoria County, Texas 77422.

OCEAN MOBILE HOME PARK LLC has applied for a renewal of TPDES Permit No. WQ0014980001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility will be located at 7030 Tri City Beach Road (FM 2354), approximately 9.3 miles south of the intersection of Farm-to-Market Roads 565 and 2354 in Beach City in Chambers County, Texas 77523.

KB HOME LONE STAR INC has applied for a new permit, proposed TPDES Permit No. WQ0015072001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located approximately 1.8 miles west and 0.5 mile south of the intersection of Farm-to-Market Road 1463 and Interstate Highway 10 in Fort Bend County, Texas 77494.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301714

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 1, 2013



## Notice of Water Rights Applications

Notice issued April 30, 2013.

APPLICATION NO. 12708; Palmetto Transoceanic LLC, Three Greenway Plaza, Suite 2000, Houston, Texas 77046 seeks authorization to construct and maintain a dam and reservoir on an unnamed tributary of Spring Creek, tributary of the San Jacinto River, San Jacinto River Basin, for flood control purposes in Harris County, Texas. The structure will temporarily store water during a storm event which would then entirely drain downstream at a regulated rate. The Applicant also seeks authorization to divert water into an off-channel reservoir for flood control purposes during high flow events and to subsequently return an equal amount of water to the unnamed tributary of Spring Creek once high flow conditions have abated. The application does not request an appropriation of state water. More information on the application and how to participate in the permitting process is given below. The application and fees were received on May 16, 2011. Additional information was received on September

26, October 14, and November 2, 2011, and February 23, March 9, August 22, and November 18, 2012. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 19, 2012. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, requiring the Permittee to return all diverted volume of state water according to the most recently approved protocol to avoid impacts to state water. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.texas.gov/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301715

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 1, 2013

#### Texas Ethics Commission

##### List of Late Filers

Listed below is the name of a filer from the Texas Ethics Commission who failed to pay the penalty fine for a late report in reference to the

listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

#### Deadline: Semiannual Report due January 18, 2011, for Candidates and Officeholders

Joey Roland, 4915 Chritien Point Ct., Sugar Land, Texas 77478-5423

TRD-201301653

David Reisman

Executive Director

Texas Ethics Commission

Filed: April 25, 2013

#### General Land Office

##### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 8, through April 15, 2013. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on May 1, 2013. The public comment period for this project will close at 5:00 p.m. on May 31, 2013.

##### FEDERAL AGENCY ACTIONS:

**Applicant: Port of Beaumont;** Location: The project site is located in the Neches River, at 330 Old Highway 90 West, in Vidor, Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Latitude: 30.080 North; Longitude -94.083 West. Project Description: The applicant proposes to construct a 1,000-foot by 800-foot stockpile area, a new roadway, rail car unloading tracks, and tank farm associated with the proposed development of an unrefined crude oil and crude oil products import and export bulk terminal that includes construction of a liquids dock and a bulk dock. Applicant proposes to construct a 40-foot wide by 80-foot long liquids dock with a 15-foot wide by 40-foot long approachway, a 1,022 linear-foot bulkhead with no backfill, two 3-foot wide by 115-foot long walkways, four breasting dolphins, six mooring dolphins, nine barge monoples, one conveyor to stock pile area and to mechanically and/or hydraulically dredge 230,000 cubic yards from an area 238-feet wide by 1,411-feet long (7.71 acres). The applicant also proposes to construct a 56-foot wide by 875-foot long bulk dock with a 120-foot wide by 875-foot long approachway, one 15-foot wide by 120-foot long approachway, two mooring dolphins, and to mechanically and/or hydraulically dredge 325,000 cubic yards from an area 362-feet wide by 1,224-feet long. CMP Project No.: 13-1072-F1. Type of Application: U.S.A.C.E. permit application #SWG-1997-01754 is being evaluated under §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act (CWA).

**Applicant: Mr. Mike Mobley;** Location: The project site is located in the Intracoastal Waterway (GIWW) on the south side of County Road (CR) 259, approximately 0.5 miles from the intersection of CR259 and State Highway 60 in Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Matagorda, Texas.



Latitude: 28.69785 North; Longitude -95.951471 West. Project Description: Project is amendment to Permit SWG-2004-02403 (formerly 23521) which was withdrawn. Amendment (01), which expires on December 31, 2013, authorized the excavation of 1.81 acres of tidal wetlands for the creation of a 60 by 835-foot non-bulkheaded entrance canal, breakwater, and bulkhead for a residential canal subdivision. Mitigation included the creation of 4.0 acres of wetlands. The applicant proposes to redesign the previously authorized residential canal subdivision to a 3.16-acre marina. Activity includes the excavation of 1.18 acres of high intertidal marsh wetlands and 1.47 acres of uplands for the construction of an 8-foot deep recreational boat harbor, an entrance canal to the GIWW, and an upland trailer part. As previously authorized, two wet detention ponds will be constructed prior to harbor completion; a 1.34 acre retention basin will be constructed on the southeast corner to catch runoff water from lots as well as from the sewer plant. Detention ponds will be built on uplands. Water from lots and sewage plant will only reach open water of canal or GIWW after being processed through the detention ponds and salt marsh located over 140 feet from canal. CMP Project No.: 13-1115-F1. Type of Application: U.S.A.C.E. permit application #SWG-1997-01754 is being evaluated under §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act (CWA).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Sheri Land, Director, P.O. Box 12873, Austin, Texas 78711-2873 or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Ms. Land at the above address.

TRD-201301728

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: May 1, 2013

## Texas Health and Human Services Commission

### Extension of Comment Period

The Health and Human Services Commission (HHSC) proposed an amendment to 1 TAC §354.1281, relating to Psychologists' Services. The proposed amendment to §354.1281 adds provisionally licensed psychologists (PLP) as another type of provider who can perform psychological counseling and services under the direct supervision of a licensed psychologist. The proposed amendment was published in the April 12, 2013, issue of the *Texas Register* (38 TexReg 2279) with a 30-day comment period to follow. HHSC has extended the comment period through June 12, 2013. Comments on the proposed amendments may be submitted to Peggy Atkins, Senior Policy Analyst, Operations Oversight, Medicaid/CHIP Division, Mail Code H390-91X, Texas Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200; or by e-mail to [peggy.atkins@hhsc.state.tx.us](mailto:peggy.atkins@hhsc.state.tx.us). HHSC encourages all interested persons to submit comments no later than the deadline. HHSC cannot guarantee that comments submitted after the deadline will be considered.

TRD-201301705

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 30, 2013

### Extension of Comment Period

The Health and Human Services Commission (HHSC) proposed an amendment to 1 TAC §355.8081, relating to allowing HHSC to reimburse for the Medicaid services provided by a provisionally licensed psychologist (PLP) under the supervision of a licensed psychologist (LP). The proposed amendment was published in the April 12, 2013, issue of the *Texas Register* (38 TexReg 2280) with a 30-day comment period to follow. HHSC has extended the comment period through June 12, 2013. Comments on the proposed amendment may be submitted to Dan Huggins, Director of Acute Care, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; or by e-mail to [Dan.Huggins@hhsc.state.tx.us](mailto:Dan.Huggins@hhsc.state.tx.us). HHSC encourages all interested persons to submit comments no later than the deadline. HHSC cannot guarantee that comments submitted after the deadline will be considered.

TRD-201301708

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: April 30, 2013

## Department of State Health Services

### Designation of Whitestone Pediatrics as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a site serving medically underserved populations: Whitestone Pediatrics at 1464 E. Whitestone Boulevard, Cedar Park, Texas 78613. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Pamela Lauer, Health Professions Resource Center - Mail Code 1898, Center for Health Statistics, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; telephone (512) 776-2775. Comments will be accepted for 30 days from the publication date of this notice.

TRD-201301658

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: April 26, 2013

## Texas Department of Insurance

### Company Licensing



Application to do business in the State of Texas by ADVANTAGEOPTIMUM, INC., assumed name of CARE1ST HEALTH PLAN, a foreign health maintenance organization. The home office is in Monterey Park, California.

Application to do business in the State of Texas by MEMORIAL HERMANN HEALTH PLAN, INC., a domestic Health Maintenance Organization. The home office is in Houston, Texas.

Application for incorporation in the State of Texas by RURAL TRUST INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201301718

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: May 1, 2013



## **Texas Lottery Commission**

Instant Game Number 1514 "Red Hot and Wild 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1514 is "RED HOT AND WILD 7'S". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1514 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1514.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 7 SYMBOL (BLACK), \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$1,000 and \$70,000. The possible red Play Symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 7 SYMBOL (RED) and RED FLAME SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1514 - 1.2D

PLAY SYMBOL	CAPTION
1 (BLACK)	ONE
2 (BLACK)	TWO
3 (BLACK)	THR
4 (BLACK)	FOR
5 (BLACK)	FIV
6 (BLACK)	SIX
8 (BLACK)	EGT
9 (BLACK)	NIN
10 (BLACK)	TEN
11 (BLACK)	ELV
12 (BLACK)	TLV
13 (BLACK)	TRN
14 (BLACK)	FTN
15 (BLACK)	FFN
16 (BLACK)	SXN
18 (BLACK)	ETN
19 (BLACK)	NTN
20 (BLACK)	TWY
21 (BLACK)	TWON
22 (BLACK)	TWTO
23 (BLACK)	TWTH
24 (BLACK)	TWFR
25 (BLACK)	TWV
26 (BLACK)	TWSX
28 (BLACK)	TWET
29 (BLACK)	TWNI
30 (BLACK)	TRTY
31 (BLACK)	TRON
32 (BLACK)	TRTO
33 (BLACK)	TRTH
34 (BLACK)	TRFR
35 (BLACK)	TRV
36 (BLACK)	TRSX
38 (BLACK)	TRET
39 (BLACK)	TRNI
40 (BLACK)	FRTY
7 SYMBOL (BLACK)	WIN
1 (RED)	ONE
2 (RED)	TWO
3 (RED)	THR
4 (RED)	FOR
5 (RED)	FIV
6 (RED)	SIX
8 (RED)	EGT
9 (RED)	NIN
10 (RED)	TEN

11 (RED)	ELV
12 (RED)	TLV
13 (RED)	TRN
14 (RED)	FTN
15 (RED)	FFN
16 (RED)	SXN
18 (RED)	ETN
19 (RED)	NTN
20 (RED)	TWY
21 (RED)	TWON
22 (RED)	TWTO
23 (RED)	TWTH
24 (RED)	TWFR
25 (RED)	TWV
26 (RED)	TWSX
28 (RED)	TWET
29 (RED)	TWNI
30 (RED)	TRTY
31 (RED)	TRON
32 (RED)	TRTO
33 (RED)	TRTH
34 (RED)	TRFR
35 (RED)	TRFV
36 (RED)	TRSX
38 (RED)	TRET
39 (RED)	TRNI
40 (RED)	FRTY
7 SYMBOL (RED)	DOUBLE
RED FLAME SYMBOL	WIN ALL
\$5.00 (BLACK)	FIVE\$
\$10.00 (BLACK)	TEN\$
\$15.00 (BLACK)	FIFTN
\$20.00 (BLACK)	TWENTY
\$40.00 (BLACK)	FORTY
\$50.00 (BLACK)	FIFTY
\$100 (BLACK)	ONE HUND
\$500 (BLACK)	FIV HUND
\$1,000 (BLACK)	ONE THOU
\$70,000 (BLACK)	70 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$70,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven

(7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1514), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1514-0000001-001.

K. Pack - A Pack of "RED HOT AND WILD 7'S" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "RED HOT AND WILD 7'S" Instant Game No. 1514 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "RED HOT AND WILD 7'S" Instant Game is determined once the latex on the Ticket is scratched off to expose 40 (forty) Play Symbols. If a player reveals a BLACK "7" Play Symbol, the player wins the PRIZE for that symbol. If a player reveals a RED "7" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If a player reveals a RED "FLAME" Play Symbol, the player WINS ALL 20 PRIZES instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 40 (forty) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 40 (forty) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 40 (forty) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No duplicate non-winning Play Symbols on a Ticket, regardless of color.

C. There will be a minimum of 4 and maximum of 10 red Play Symbols on a Ticket unless otherwise restricted by the prize structure.

D. No more than four identical non-winning Prize Symbols on a Ticket.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. No prize amount in a non-winning spot will correspond with the Play Symbol (i.e., 10 and \$10).

G. The RED "7" (doubler) and RED "FLAME" (win all) Play Symbols will only appear on intended winning Tickets as dictated by the prize structure.

H. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "RED HOT AND WILD 7'S" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "RED HOT AND WILD 7'S" Instant Game prize of \$1,000 or \$70,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "RED HOT AND WILD 7'S" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "RED HOT AND WILD 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "RED HOT AND WILD 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 Tickets in the Instant Game No. 1514. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1514 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	660,800	10.71
\$10	708,000	10.00
\$15	188,800	37.50
\$20	236,000	30.00
\$50	20,650	342.86
\$100	23,895	296.30
\$500	4,012	1,764.71
\$1,000	290	24,413.79
\$70,000	6	1,180,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.84. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1514 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1514, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301674

Bob Biard

General Counsel

Texas Lottery Commission

Filed: April 26, 2013



Instant Game Number 1515 "Fantastic 5's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1515 is "FANTASTIC 5'S". The play style is "row, column, diagonal".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1515 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1515.

A. Display Printing - That area of the instant game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1 SYMBOL, 2 SYMBOL, 3 SYMBOL, 4 SYMBOL, 5 SYMBOL, 6 SYMBOL, 7 SYMBOL, 8 SYMBOL, 9 SYMBOL, 5 TIMES SYMBOL, NO BONUS SYMBOL, TRY AGAIN SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$5,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1515 - 1.2D

PLAY SYMBOL	CAPTION
1 SYMBOL	*
2 SYMBOL	*
3 SYMBOL	*
4 SYMBOL	*
5 SYMBOL	*
6 SYMBOL	*
7 SYMBOL	*
8 SYMBOL	*
9 SYMBOL	*
5 TIMES SYMBOL	WINX5
NO BONUS SYMBOL	NO BONUS
TRY AGAIN SYMBOL	TRY AGAIN
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$5,000	FIV THOU

\*The captions for these symbols will be in the format of PSTTT, whereas P denotes the 1 through 9 position in the play area, S denotes the actual symbol, and TTT denotes the ticket number.

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$5,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1515), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1515-0000001-001.

K. Pack - A Pack of "FANTASTIC 5'S" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages

of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FANTASTIC 5'S" Instant Game No. 1515 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant Ticket. A prize winner in the "FANTASTIC 5'S" Instant Game is determined once the latex on the Ticket is scratched off to expose 11 (eleven) Play Symbols. If a player reveals three "5" Play Symbols in any one row, column or diagonal, the player wins the PRIZE. The player scratches the BONUS for a chance to win 5 TIMES the PRIZE won! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

## 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 11 (eleven) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets will not have identical play data, spot for spot.

B. There will be only one occurrence of three matching "5" Play Symbols appearing in a row, column or diagonal on winning tickets as dictated by the prize structure.

C. There will be no occurrence of three matching Play Symbols other than the "5" Play Symbol appearing in a row, column or diagonal.

D. The "5 TIMES" (win x 5) Play Symbols may appear on both winning and Non-Winning Tickets.

E. The "5 TIMES" (win x 5) Play Symbols will appear on winning Tickets only as dictated by the prize structure.

F. The Bonus Play Symbols will be used an approximate equal number of times on Non-Winning Tickets.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "FANTASTIC 5'S" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FANTASTIC 5'S" Instant Game prize of \$1,000 or \$5,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FANTASTIC 5'S" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.



D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "FANTASTIC 5'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "FANTASTIC 5'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account,

with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 Tickets in the Instant Game No. 1515. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1515 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,209,600	8.33
\$2	705,600	14.29
\$4	252,000	40.00
\$5	67,200	150.00
\$10	67,200	150.00
\$20	21,000	480.00
\$50	3,360	3,000.00
\$100	1,260	8,000.00
\$500	672	15,000.00
\$1,000	210	48,000.00
\$5,000	30	336,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.33. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1515 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1515, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

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Bob Biard

General Counsel

Texas Lottery Commission

Filed: May 1, 2013



Instant Game Number 1521 "Lucky 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1521 is "LUCKY 7'S". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1521 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1521.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 7 SYMBOL, \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$777.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1521 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
8	EGT
9	NIN
10	TEN
11	ELV
7 SYMBOL	WIN
\$1.00	ONE\$
\$2.00	TWOS
\$5.00	FIVES
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$777	SVN HUN 77

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$777.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1521), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1521-0000001-001.

K. Pack - A Pack of "LUCKY 7'S" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page, etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY 7'S" Instant Game No. 1521 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant Ticket. A prize winner in the "LUCKY 7'S" Instant Game is determined once the latex on the Ticket is scratched off to expose 14 (fourteen) Play Symbols. The player must scratch the play area. If the player reveals a "7" Play Symbol, the player wins the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 14 (fourteen) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 14 (fourteen) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 14 (fourteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 14 (fourteen) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Players can win up to seven (7) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play

and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted.

D. There will be a random distribution of all symbols on the Ticket unless affected by other constraints, play action or prize structure.

E. Non-winning Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than one (1) time.

G. The "7" Play Symbol will only appear as dictated by the prize structure.

H. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY 7'S" Instant Game prize of \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00 or \$100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY 7'S" Instant Game prize of \$777, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY 7'S" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LUCKY 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "LUCKY 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 Tickets in the Instant Game No. 1521. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1521 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,344,000	7.50
\$2	672,000	15.00
\$5	134,400	75.00
\$10	67,200	150.00
\$20	33,600	300.00
\$40	26,712	377.36
\$100	2,100	4,800.00
\$777	84	120,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.42. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1521 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing

will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1521, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301727

Bob Biard

General Counsel

Texas Lottery Commission

Filed: May 1, 2013



## Instant Game Number 1532 "Lady Bucks"

### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1532 is "LADY BUCKS". The play style is "match 3 of x".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1532 shall be \$1.00 per Ticket.

#### 1.2 Definitions in Instant Game No. 1532.

A. Display Printing - That area of the instant game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100, \$200, \$1,000, ROSE SYMBOL, LIZARD SYMBOL, FROG SYMBOL, RABBIT SYMBOL and LADYBUG SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1532 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$1,000	ONE THOU
ROSE SYMBOL	NO BONUS
LIZARD SYMBOL	NO BONUS
FROG SYMBOL	NO BONUS
RABBIT SYMBOL	NO BONUS
LADYBUG SYMBOL	WIN\$10

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$40.00, \$50.00, \$100 or \$200.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1532), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1532-0000001-001.

K. Pack - A Pack of "LADY BUCKS" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LADY BUCKS" Instant Game No. 1532 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant Ticket. A prize winner in the "LADY BUCKS" Instant Game is determined once the latex on the Ticket is scratched off to expose 7 (seven) Play Symbols. If a player reveals 3 matching prize amounts, the player wins that amount. If a player reveals a "LADYBUG" Play Symbol in the QUICK \$10 play area, the player wins \$10 instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 7 (seven) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 7 (seven) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 7 (seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 7 (seven) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets will not have identical play data, spot for spot.

B. No Ticket will contain two sets of three identical prize amounts.

C. No Ticket will contain 4 or more identical prize amounts.

D. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

E. The "LADYBUG" (win \$10) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "LADY BUCKS" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$30.00, \$40.00, \$50.00, \$100 or \$200, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00,

\$40.00, \$50.00, \$100 or \$200 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LADY BUCKS" Instant Game prize of \$1,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LADY BUCKS" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LADY BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "LADY BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 Tickets in the Instant Game No. 1532. The approximate number and value of prizes in the game are as follows:



Figure 2: GAME NO. 1532 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,209,600	8.33
\$2	940,800	10.71
\$4	33,600	300.00
\$5	67,200	150.00
\$10	100,800	100.00
\$20	50,400	200.00
\$30	3,360	3,000.00
\$40	2,100	4,800.00
\$50	1,680	6,000.00
\$100	420	24,000.00
\$200	168	60,000.00
\$1,000	126	80,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.18. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1532 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1532, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301675

Bob Biard

General Counsel

Texas Lottery Commission

Filed: April 26, 2013



Instant Game Number 1543 "Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1543 is "WEEKLY GRAND". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1543 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1543.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, \$2.00, \$4.00, \$5.00, \$10.00, \$40.00, \$100, \$300, GRAND SYMBOL, CLOVER SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, MONEY BAG SYMBOL and TOP HAT SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1543 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
\$2.00	TWOS
\$4.00	FOURS
\$5.00	FIVE\$
\$10.00	TEN\$
\$40.00	FORTY
\$100	ONE HUND
\$300	THR HUND
GRAND SYMBOL	WEEK
CLOVER SYMBOL	CLOVER
DIAMOND SYMBOL	DIAMOND
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTOGLD
MONEY BAG SYMBOL	MONEYBAG
TOP HAT SYMBOL	TOPHAT

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4) digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$300.

H. High-Tier Prize - A prize of \$1,000/week (\$1,000 per week for 20 years or Cash Value Option). The Cash Value Option of the prize will be determined at the time of claim and based on the cost of purchasing the annuity.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1543), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1543-0000001-001.

K. Pack - A Pack of "WEEKLY GRAND" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WEEKLY GRAND" Instant Game No. 1543 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "WEEKLY GRAND" Instant Game is determined once the latex on the Ticket is scratched off to expose 15 (fifteen) Play Symbols. Game 1: If YOUR NUMBER Play Symbol beats THEIR NUMBER Play Symbol in any one row across, the player wins the prize for that row. If a player reveals the GRAND Play Symbol, the player wins \$1,000 per week for 20 years. Game 2: If a player reveals 3 matching prize amounts, the player wins that amount. If a player re-

veals 3 GRAND Play Symbols, the player wins \$1,000 per week for 20 years. Game 3: If a player matches 2 out of 3 Play Symbols, the player wins \$20 instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

## 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 15 (fifteen) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 15 (fifteen) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 15 (fifteen) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Players can win up to three (3) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted.

D. Game 1: The "YOUR NUMBER" Play Symbol will never be the same as the "THEIR NUMBER" Play Symbol.

E. Game 1: The "YOUR NUMBER" Play Symbol will never be a "1" Play Symbol.

F. Game 1: The "THEIR NUMBER" Play Symbol will never be an "8" Play Symbol.

G. Game 1: Non-winning ROWS on a Ticket will not have the same symbols regardless of order.

H. Game 2: Winning games can have only one (1) set of three (3) matching Prize Symbols.

I. Game 2: Winning games cannot have more than three (3) matching Prize Symbols.

J. Game 2: No game will contain two (2) sets of three (3) matching Prize Symbols.

K. Game 3: There will never be more than two (2) matching Play Symbols in a game.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$300, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00 or \$300 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WEEKLY GRAND" top level prize of \$1,000 per week for 20 years, the claimant must sign the winning Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. When claiming a "WEEKLY GRAND" Instant Game prize of \$1,000 per week for 20 years, the claimant must choose one of five (5) payment options for receiving his prize:

1. Cash Value Option via direct deposit transfer to the claimant/winner's account. For the top prize, a cash value option may be selected at the time of claiming the prize. The value of the prize will be determined at the time of claim and based on the cost of purchasing the annuity.

2. Weekly via direct deposit transfer to the claimant/winner's account. This will be similar to the current "WEEKLY GRAND" (Game 1440) payment process. With this plan, a payment of \$1,000.00 less Federal withholding will be made once a week for 20 years. After the initial payment, installment payments will be made every Wednesday.

3. Monthly via direct deposit transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, an initial payment of \$4,413.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

4. Quarterly via direct deposit transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

5. Annually via direct deposit transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of \$52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

D. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$300, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.E of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "WEEKLY GRAND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "WEEKLY GRAND" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players

whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 Tickets in the Instant Game No. 1543. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1543 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	1,632,000	7.35
\$4	1,104,000	10.87
\$5	72,000	166.67
\$10	120,000	100.00
\$20	96,000	125.00
\$40	32,400	370.37
\$300	1,700	7,058.82
\$1,000/WK	3	4,000,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.92. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1543 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1543, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301683

Bob Biard

General Counsel

Texas Lottery Commission

Filed: April 29, 2013



Instant Game Number 1548 "5X Raceway Riches"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1548 is "5X RACEWAY RICHES". The play style is "beat score".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1548 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1548.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1 CAR SYMBOL, 2 CAR SYMBOL, 3 CAR SYMBOL, 4 CAR SYMBOL, 5 CAR SYMBOL, 6 CAR SYMBOL, 7 CAR SYMBOL, 8 CAR SYMBOL, 9 CAR SYMBOL, 10 CAR SYMBOL, 11 CAR SYMBOL, 12 CAR SYMBOL, 13 CAR SYMBOL, 14 CAR SYMBOL, 15 CAR SYMBOL, 16 CAR SYMBOL, 17 CAR SYMBOL, 18 CAR SYMBOL, 19 CAR SYMBOL, 20 CAR SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$50,000. The possible green Play Symbols are: 1 CAR SYMBOL, 2 CAR SYMBOL, 3 CAR SYMBOL, 4 CAR SYMBOL, 5 CAR SYMBOL, 6 CAR SYMBOL, 7 CAR SYMBOL, 8 CAR SYMBOL, 9 CAR SYMBOL, 10 CAR SYMBOL, 11 CAR SYMBOL, 12 CAR SYMBOL, 13 CAR SYMBOL, 14 CAR SYMBOL, 15 CAR SYMBOL, 16 CAR SYMBOL, 17 CAR SYMBOL, 18 CAR SYMBOL, 19 CAR SYMBOL and 20 CAR SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1. GAME NO. 1548 - 1.2D

PLAY SYMBOL	CAPTION
1 CAR SYMBOL (BLACK)	ONE
2 CAR SYMBOL (BLACK)	TWO
3 CAR SYMBOL (BLACK)	THR
4 CAR SYMBOL (BLACK)	FOR
5 CAR SYMBOL (BLACK)	FIV
6 CAR SYMBOL (BLACK)	SIX
7 CAR SYMBOL (BLACK)	SVN
8 CAR SYMBOL (BLACK)	EGT
9 CAR SYMBOL (BLACK)	NIN
10 CAR SYMBOL (BLACK)	TEN
11 CAR SYMBOL (BLACK)	ELV
12 CAR SYMBOL (BLACK)	TLV
13 CAR SYMBOL (BLACK)	TRN
14 CAR SYMBOL (BLACK)	FTN
15 CAR SYMBOL (BLACK)	FFN
16 CAR SYMBOL (BLACK)	SXN
17 CAR SYMBOL (BLACK)	SVT
18 CAR SYMBOL (BLACK)	ETN
19 CAR SYMBOL (BLACK)	NTN
20 CAR SYMBOL (BLACK)	TWY
\$5.00 (BLACK)	FIVE\$
\$10.00 (BLACK)	TEN\$
\$20.00 (BLACK)	TWENTY
\$50.00 (BLACK)	FIFTY
\$100 (BLACK)	ONE HUND
\$500 (BLACK)	FIV HUND
\$1,000 (BLACK)	ONE THOU
\$50,000 (BLACK)	50 THOU
1 CAR SYMBOL (GREEN)	ONE
2 CAR SYMBOL (GREEN)	TWO
3 CAR SYMBOL (GREEN)	THR
4 CAR SYMBOL (GREEN)	FOR
5 CAR SYMBOL (GREEN)	FIV
6 CAR SYMBOL (GREEN)	SIX
7 CAR SYMBOL (GREEN)	SVN
8 CAR SYMBOL (GREEN)	EGT
9 CAR SYMBOL (GREEN)	NIN
10 CAR SYMBOL (GREEN)	TEN
11 CAR SYMBOL (GREEN)	ELV
12 CAR SYMBOL (GREEN)	TLV
13 CAR SYMBOL (GREEN)	TRN
14 CAR SYMBOL (GREEN)	FTN
15 CAR SYMBOL (GREEN)	FFN
16 CAR SYMBOL (GREEN)	SXN
17 CAR SYMBOL (GREEN)	SVT
18 CAR SYMBOL (GREEN)	ETN
19 CAR SYMBOL (GREEN)	NTN
20 CAR SYMBOL (GREEN)	TWY

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1548), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1548-0000001-001.

K. Pack - A Pack of "5X RACEWAY RICHES" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "5X RACEWAY RICHES" Instant Game No. 1548 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "5X RACEWAY RICHES" Instant Game is determined once the latex on the Ticket is scratched off to expose 19 (nineteen) Play Symbols. If a player's YOUR CAR NUMBER Play Symbol is closer to the FINISH LINE than the other car IN THAT RACE, the player wins the PRIZE for that race. If a player's YOUR CAR NUMBER Play Symbol wins and has a GREEN number Play Symbol, the player wins FIVE TIMES the PRIZE for that race! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 19 (nineteen) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 19 (nineteen) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 19 (nineteen) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Players can win up to six (6) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play

and Prize Symbol patterns if they have the same symbols in the same positions.

C. The "YOUR CAR NUMBER" Play Symbol will appear in every race regardless of color.

D. Opponent's car number Play Symbols will all be different regardless of color.

E. The "YOUR CAR NUMBER" Play Symbol and the opponent's car number Play Symbol will never be the same distance from the finish line.

F. Non-winning Prize Symbols will be different.

G. Non-Winning Tickets will contain at least one (1) RACE with a green "YOUR CAR NUMBER" Play Symbol.

H. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

I. The top Prize Symbol will appear on every Ticket unless otherwise restricted.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "5X RACEWAY RICHES" Instant Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "5X RACEWAY RICHES" Instant Game prize of \$1,000 or \$50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "5X RACEWAY RICHES" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "5X RACEWAY RICHES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "5X RACEWAY RICHES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "5X RACEWAY RICHES" Instant Game scratch-off Ticket may be entered into one of four promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Ticket for information on eligibility and entry requirements.



### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players

whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1548. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1548 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	880,000	6.82
\$10	760,000	7.89
\$20	160,000	37.50
\$50	37,400	160.43
\$100	11,000	545.45
\$500	200	30,000.00
\$1,000	150	40,000.00
\$50,000	7	857,142.86

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.25. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1548 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1548, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301684  
Bob Biard  
General Counsel  
Texas Lottery Commission  
Filed: April 29, 2013

◆ ◆ ◆  
**North Central Texas Council of Governments**

### Notice of Award

The North Central Texas Council of Governments issued a competitive call for projects to award Federal Transit Administration Job Access/Reverse Commute (JA/RC) (49 U.S.C. §5316) and New Freedom (49 U.S.C. §5317) Program funds. The request appeared in the August 31, 2012, issue of the *Texas Register* (37 TexReg 7001).

Approximately \$2.6 million in Job Access/Reverse Commute and \$2.9 million in New Freedom funds were available for eligible projects in the Dallas-Fort Worth-Arlington and Denton-Lewisville Urbanized Areas. Seven projects were selected for award of approximately \$4.4 million.

TRD-201301679  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: April 29, 2013

◆ ◆ ◆  
**Public Utility Commission of Texas**

Announcement of Application for Amendment to a  
State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 25, 2013, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

**Project Title and Number:** Application of Grande Communications Networks, LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 41418.

The requested amendment is to expand the service area footprint to include the Merritt Legacy Apartments, a multiple dwelling unit, in the city limits of Leander, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41418.

TRD-201301677

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 26, 2013



#### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 29, 2013, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

**Project Title and Number:** Application of James Cable, LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 41425.

The requested amendment is to expand the service area footprint to include the municipality of Huntington, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41425.

TRD-201301707

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 30, 2013



#### Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 26, 2013, for a service provider certificate of operating authority (SPCOA) pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

**Docket Title and Number:** Application of NDS Technologies, LLC for a Service Provider Certificate of Operating Authority, Docket Number 41421.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant intends to provide telecommunications services within the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than May 17, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 41421.

TRD-201301687

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 29, 2013



#### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 25, 2013, TNCI, Inc. (Applicant) filed an application to amend service provider certificate of operating authority (COA) Number 60454. Applicant seeks approval to reflect a change in ownership/control and a change in name to TNCI Operating Company LLC due to a voluntary Chapter 11 filing.

**Docket Title and Number:** Application of TNCI, Inc. for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 41419.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than May 17, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 41419.

TRD-201301678

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 26, 2013



#### Notice of Application for Approval of Revised Depreciation Rate

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 25, 2013, for approval of a revised depreciation rate pursuant to §52.252 and §53.056 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 2007 and Supp. 2012). A summary of the application follows.

**Docket Title and Number:** Application of Big Bend Telephone Company, Inc. for Approval of Revised Depreciation Rate Pursuant to P.U.C. Substantive Rule §26.206, Docket Number 41417.

The Application: Big Bend Telephone Company, Inc. (Big Bend) filed an application for approval of a revised depreciation rate for Account

2231.400 - Radio Systems - Satellite Facilities. Due to technological advances, the satellite facilities will no longer be deployed once the current license expires. The satellite facilities are expected to be replaced by the latest terrestrial radio systems. Big Bend requests an effective date of January 1, 2013.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 41417.

TRD-201301676

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 26, 2013



#### Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 23, 2013, for retail electric provider certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of OriGen Energy, LLC for Retail Electric Provider Certification, Docket Number 41411.

Applicant's requested service area is for the geographic area of the Electric Reliability Council of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Docket Number 41411.

TRD-201301655

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 25, 2013



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint report and application for sale, transfer, or merger filed with the Public Utility Commission of Texas on April 29, 2013, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.101 and §37.154 (Vernon 2007 and Supp. 2012).

Docket Style and Number: Joint Report and Application of Sharyland Utilities, LP, Sharyland Distribution Transmission Services, LLC, and Southwestern Public Service Company for Approval of Purchase and Sale of Facilities, for Approval of Regulatory Accounting treatment of Gain on Sale, and for Transfer of Certificate Rights, Docket Number 41430.

The Application: Sharyland Utilities, LP, Sharyland Distribution Transmission Services, LLC (SDTS), and Southwestern Public Service Company (SPS) (collectively, Applicants) filed a joint report and application for approval of (a) the purchase by SDTS and sale by SPS

of certain transmission facilities owned by SPS; (b) the regulatory accounting treatment of the gain on sale of the assets proposed by SPS; and (c) the transfer of the associated certificate of convenience and necessity rights for the transmission facilities from SPS to SDTS.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 41430.

TRD-201301706

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 30, 2013



#### Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 24, 2013, to amend a certificate of convenience and necessity for a proposed transmission line in Jackson and Wharton Counties, Texas.

Docket Style and Number: Application of South Texas Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for the Proposed Vanderbilt to Ricebird 138-kV Transmission Line in Jackson and Wharton Counties. Docket Number 41395.

The Application: South Texas Electric Cooperative, Inc. (STEC) filed an application to amend a certificate of convenience and necessity (CCN) for a proposed 138-kV transmission line in Jackson and Wharton Counties. The proposed project is designated as the Vanderbilt to Ricebird 138-kV transmission line project. The project consists of the addition of a 138-kV circuit to an existing STEC 69-kV transmission line. STEC is proposing to add approximately 47.7 miles of 138-kV circuit to its existing 69-kV transmission line facilities from the Vanderbilt Substation to the Ricebird Substation. The total estimated cost for the project is approximately \$17.2 million.

This application includes facilities subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies. The Public Utility Commission of Texas may approve any of the routes or route segments presented in the application.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is June 10, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41395.

TRD-201301654

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 25, 2013



#### Notice of Petition for Restoration of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 26, 2013, for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Application of Eastex Telephone Cooperative, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to PURA §56.025 and P.U.C. Substantive Rule §26.406. Docket Number 41423.

The Application: Eastex Telephone Cooperative, Inc. (Eastex) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Eastex. The petition requests that the Public Utility Commission of Texas restore \$662,255.48 in funds from the TUSF to Eastex. Eastex stated it is a cooperative and thus is eligible to recover funds from the TUSF under these rule.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41423.

TRD-201301688

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 29, 2013

## Texas Department of Transportation

### Notice of Availability of Record of Decision - Segment C of State Highway 99/Grand Parkway

A Record of Decision (ROD) has been issued for the Final Environmental Impact Statement (FEIS) for Grand Parkway (State Highway 99) Segment C from United States Highway 59 (US 59) to State Highway 288 (SH 288) in Fort Bend and Brazoria Counties, Texas. Segment C, as proposed, is a four-lane, controlled access toll road with intermittent frontage roads. The approximate distance of Segment C is 26 miles.

The ROD is available for viewing or copying at the Grand Parkway Association website,

www.grandpky.com; at the offices of the Grand Parkway Association, located at 4544 Post Oak Place, Suite 222, Houston, Texas; or at the Texas Department of Transportation's Houston District Office located at 7600 Washington Avenue, Houston, Texas.

For further information on Segment C, please contact David Gornet, P.E. at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241.

TRD-201301725

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: May 1, 2013

### Notice of Cooperative Planning Agreement

The Texas Department of Transportation and Collin County, Texas executed that certain Cooperative Planning Agreement, which became effective on April 23, 2013. The Cooperative Planning Agreement identifies the following corridors as future transportation corridors in Collin County, Texas.

The Collin County Outer Loop in Collin County, Texas (Outer Loop), consisting of five segments as described below. Additional details of the proposed Outer Loop and proposed alignments may be viewed at the Collin County Engineering Department, 825 N. McDonald Street, Suite 160, McKinney, Texas 75069, or the Texas Department of Transportation Dallas District Office, 4777 East Highway 80, Mesquite, Texas 75150.

The following Segment descriptions are listed in order, beginning at the Denton County line, continuing east and then south to the Rockwall County line.

**Segment 3 - From Dallas North Tollway (DNT) east to US 75:** This is a 13.8 mile, 500 foot wide technically preferred alignment. The alignment starts at the DNT where it intersects with CR 51. The alignment follows CR 51 for approximately 0.7 miles then heads northeast for approximately 2.6 miles where it bisects CR 87. It then heads east/southeast for 1.8 miles until it intersects with FM 2478. It continues straight east for approximately 4.1 miles where it crosses FM 543. It then heads northeast for 1.9 miles where it intersects with CR 206. It runs east/northeast for another 2.7 miles to connect to US 75.

**Segment 1 - From US 75 east to SH 121:** This is a 4.2 mile, 500 foot wide technically preferred alignment. The alignment starts at US 75 approximately where CR 366 intersects with US 75. It continues east for approximately 1.4 miles to bisect SH 5. It continues east for another 1.8 miles where it crosses CR 419. It then heads south/southeast for 1.0 mile to connect to SH 121.

**Segment 5 - From SH 121 east and south to US 380:** This is a 21 mile, 500 foot wide technically preferred alignment. The alignment starts at SH 121, approximately half a mile north of CR 1220. The alignment runs southeast for 0.5 miles to intersect with CR 472 then heads east/northeast for approximately 2.8 miles where it crosses FM 2862 near CR 506. The alignment heads almost straight east for an estimated 5.8 miles to intersect with CR 671. Then it curves south/southeast for approximately 2.2 miles for FM 981 (2 miles west of the Hunt/Collin County line). It then heads south for 2.0 miles where it crosses CR 668 (0.2 miles east of CR 825). The alignment heads south/southeast for an estimated 1.4 miles to cross at CR 618 (0.4 miles east of CR 655). It then continues south/southwest 3.5 miles where it intersects FM 2194. Then heads straight south another 2.8 miles to US 380 (approximately 2.2 miles west of the Hunt/Collin County line).

**Segment 4 - From US 380 to FM 6:** This is a 7.3 mile, 500 foot wide technically preferred alignment. The alignment starts at US 380 and continues straight south for 0.7 miles and turns southeast for approximately 1.3 miles. At a point 0.5 miles west of CR 697, the alignment turns and heads straight south for 1.4 miles to intersect at CR 647 (approximately 1.7 miles west of the Hunt/Collin County line). From there the alignment heads south/southwest for approximately 1.8 miles where it crosses FM 1778 (approximately 2.7 miles west of the Hunt/Collin County line). It straightens out and heads south for 2.1 miles to FM 6.

**Segment 2 - From FM 6 to Rockwall County Line:** This is a 6.5 mile, 500 foot wide technically preferred alignment. The alignment heads south from FM 6, 1.8 miles where it intersects with CR 1040 and then heads south/southwest for 2.7 miles to a point where CR 800 intersects FM 1138 (approximately 1 mile west of the Royse City municipal limits). From there the alignment follows FM 1138 south for approximately 2.0 miles to the Rockwall/Collin County line.

Copies of the current Cooperative Planning Agreement and all plans for the future transportation projects referred to by the Cooperative Planning Agreement are available for review at the Collin County Engineering Department, 825 N. McDonald Street, Suite 160, McKinney, Texas 75069 or the Dallas District Office of the Texas Department of Transportation, 4777 East Highway 80, Mesquite, Texas 75150, telephone (214) 320-6100.

**The public is hereby notified that the status and alignment of the future transportation corridors identified in the Cooperative Planning Agreement, as it is amended from time to time, are subject to change. The public may inquire as to the current status and alignment of any future transportation corridor by contacting the Collin County Engineering Department or the Dallas District of the Texas Department of Transportation.**

TRD-201301695

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 30, 2013

## **Upper Rio Grande Workforce Development Board**

Request for Proposals - Program and Fiscal Monitoring Services

PY12-RFP-200-020

The Upper Rio Grande Workforce Development Board (also known as Workforce Solutions Upper Rio Grande or the URGWDB) is seeking the services of a qualified consultant to conduct independent reviews and issue written recommendations in response to concerns of fraud, waste, theft, and program abuse.

Workforce Solutions Upper Rio Grande is soliciting proposals from interested applicants with experience in program and fiscal monitoring of the following workforce development programs: Child Care Services, Workforce Investment Act of 1998, Temporary Assistance for Needy Families (TANF)/Choices, Food Stamps Employment and Training, Project Reintegration of Offenders, Migrant Seasonal Farmworkers, and Trade Adjustment Assistance (TAA).

Release of Request for Proposals: April 25, 2013, 12:00 p.m. MDT

Respondents' Conference: April 29, 2013, 11:00 a.m. MDT

Question Submission Deadline: May 6, 2013, 5:00 p.m. MDT

Proposal Submission Deadline: May 17, 2013, 5:00 p.m. MDT

The authorized Workforce Board contact person for this procurement is Muriel Thomas-Borders, Contracts Administrator, Upper Rio Grande Workforce Development Board, 300 E. Main, Suite 800, El Paso, Texas 79901, Telephone: (915) 887-2220, Fax: (915) 351-6018 or via email at [muriel.borders@urgjobs.org](mailto:muriel.borders@urgjobs.org).

TRD-201301652

Joseph G. Sapien

Program Administrator

Upper Rio Grande Workforce Development Board

Filed: April 25, 2013

Request for Proposals - Real Estate Broker Services

PY12-RFP-200-802

It is the intention of the Workforce Board to enter into an agreement with a qualified broker or brokerage firm to provide real estate advisory services and commercial leasing agent representation on behalf of the Workforce Board. Services will be on an as-needed basis for Workforce Board-identified sites throughout the contracted year. Currently the Workforce Board has 13 locations throughout our six-county region consisting of administrative offices, career centers, and satellite centers. Our satellite centers are co-locations with institutions of higher learning, other governmental entities, and nonprofit organizations. It is the intent of the Workforce Board to develop state-of-the-art career centers that incorporate highly visible locations strategically located to maximize clientele utilization. These facilities should have certain common attributes:

Efficiency and cost effectiveness

Flexibility and expandability

Clean Surroundings

Easy visibility

Accessibility

Professional image

Aesthetically pleasing

Security and safety

*Date Activity*

April 29, 2013, 12:00 p.m. MDT - Issuance of RFP

May 9, 2013, 11:30 a.m. MDT - Pre-Bid Conference

May 24, 2013, 5:00 p.m. MDT - Application Submission Deadline

May 29 - June 5, 2013 - Evaluation of Applications

April 30, 2013 - Selection for Award(s)

May 1 - May 8, 2013 - Contract Negotiations

July 1, 2013 - Executed Contract(s)

The authorized Workforce Board contact person for this procurement is Ms. Muriel Thomas-Borders, Contracts Administrator, Upper Rio Grande Workforce Development Board, 300 E. Main, Suite 800, El Paso, Texas 79901, Telephone: (915) 887-2220, Fax: (915) 351-2790 or via email at [muriel.borders@urgjobs.org](mailto:muriel.borders@urgjobs.org).

TRD-201301686

Joseph G. Sapien

Program Administrator

Upper Rio Grande Workforce Development Board

Filed: April 29, 2013

## **Texas Water Development Board**

Requests for Statements of Qualifications for Water Research

Pursuant to 31 Texas Administrative Code (TAC) §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications leading to the possible award of a contract to develop a groundwater availability model for the Brazos River Alluvium Aquifer system. The project should take no more than three years to complete.

Details on the research projects and project requirements are available from the TWDB website [http://www.twdb.texas.gov/about/contract\\_admin/RFO/](http://www.twdb.texas.gov/about/contract_admin/RFO/). The TWDB website site includes (1) guidelines for the Statements of Qualifications, (2) copies of the attachments, (3) a

list of Statement of Qualifications Review Criteria and (4) some supporting material.

## Background

In 2001, the Texas Legislature mandated that the TWDB obtain or develop groundwater availability models for all major and minor aquifers in Texas in coordination with groundwater conservation districts and regional water planning groups (Texas Water Code §16.012). TWDB staff have developed or obtained groundwater availability models for all of the 9 major aquifers and 13 of the 21 minor aquifers. TWDB staff is working on or have been assigned to develop models for six minor aquifers: the eastern arm of the Capitan Reef Complex Aquifer, the Blossom Aquifer, the Marathon Aquifer, and the three aquifers (Hickory, Ellenburger-San Saba, and Marble Falls Aquifers) in the Llano Uplift area of Texas. We are also considering adopting a series of groundwater flow models developed by El Paso Water Utilities for the Bone Spring-Victorio Peak Aquifer. The last minor aquifer remaining to be modeled is the Brazos River Alluvium Aquifer.

In 2009, we contracted with the U.S. Geological Survey to analyze existing data to construct the hydrogeologic framework for the Brazos River Alluvium. This project will be to develop a groundwater availability model for the Brazos River Alluvium Aquifer system using the data from the U.S. Geological Survey contract, as well as other sources as needed and required.

## Description of Research Objectives

Since 1999, the Texas Legislature has approved funding for the Groundwater Availability Modeling Program. The purpose of the Groundwater Availability Modeling Program is to provide reliable and timely information on available groundwater to the citizens of Texas to ensure adequate supplies or to recognize inadequate supplies over a 50-year planning period.

In support of the Groundwater Availability Modeling Program, the TWDB is requesting Statements of Qualifications for developing a numerical groundwater flow model for the Brazos River Alluvium Aquifer system. Part of this project will be to analyze surface water-groundwater interactions with a goal that the model developed from this project can later be coupled with a surface water model to more accurately represent and assess this interaction. In addition, any interactions with underlying aquifers should be assessed and modeled accordingly. One of the objectives for the model is to be able to accurately predict different pumping scenarios and how large pumping in one of the hydraulically connected aquifers may affect the system. Additional information from the groundwater conservation districts located in the study area should be requested, reviewed, and used, as applicable, to advance the modeling effort. Pumping and the model calibration should be projected to the most recent time defensible with an approach used and approved by TWDB staff and should also encapsulate historical periods of stresses upon the aquifers. This proposed groundwater availability modeling project shall (1) include stakeholder involvement, (2) use valid, defensible, and documented data and standard scientific modeling procedures and (3) follow all TWDB groundwater availability modeling protocol and standards, as applicable unless negotiated otherwise. We encourage the collection of new data that directly benefits the project.

Details on the modeling projects and project requirements are available from TWDB. The TWDB website site includes (1) guidelines for the Statements of Qualifications, (2) copies of the attachments, (3) a list of Statement of Qualifications Review Criteria and (4) some supporting material ([http://www.twdb.texas.gov/about/contract\\_admin/RFQ/](http://www.twdb.texas.gov/about/contract_admin/RFQ/)).

The following issues need to be addressed in each Statement of Qualifications:

1. experience with hydrogeology, knowledge of the Brazos River Alluvium Aquifer and any associated aquifers in communication with the Brazos River Alluvium Aquifer and experience with MODFLOW and Groundwater Vistas;
2. communication between the contractor and stakeholders for the model including regional water planning groups and groundwater conservation districts;
3. approach for calibrating the model;
4. approach for dealing with de-watered cells;
5. approach for modeling surface water/groundwater, recharge, and hydraulic properties;
6. total budget and an itemized budget broken by tasks and personnel; and
7. project schedule grouped by tasks and projected expenditures.

In addition, we expect potential contractors to indicate their abilities in:

1. general hydrogeology;
2. hydrogeology of the modeled aquifers;
3. numerical groundwater flow modeling;
4. geographical information systems including geodatabase use and design;
5. communicating with the general public;
6. technology transfer;
7. producing high-quality reports; and
8. meeting deadlines within budget.

Note: Contract time extensions will be granted only in extreme cases.

Interim deliverables shall include a draft geodatabase of all source data and a conceptual model report. At the end of the project, draft and final deliverables will include the interim deliverables and a numerical groundwater flow model (in MODFLOW and Groundwater Vistas format), as well as a model report describing the calibration portion of the project. All draft and final reports shall be delivered in Word and PDF formats. All information used in the modeling effort should be included and documented in sufficient detail, including metadata that describes units, formulas, and source of the data, so TWDB staff can replicate the process from beginning to end.

At a minimum, TWDB staff expects to meet with the project team at the beginning of the project and at the midpoint of the project. Coordination with TWDB staff, as well as with the groundwater conservation districts within the study area, will be critical throughout the project.

A formal presentation discussing and presenting the results shall be given to TWDB staff at the end of the project. Additional technical meetings shall be scheduled either in person or through a webinar venue to discuss modeling progress and issues. TWDB staff may periodically visit the contractor's work premises to assess progress on the project. Formal stakeholder meetings shall be scheduled in the study area throughout the project. Detailed monthly progress reports must be submitted to the TWDB outlining progress of the project and include the original schedule timeline and how the project is progressing relative to this standard. Project invoices cannot be processed without detailed description of the progress made by tasks. Each of the project tasks must be described in detail consistent with the budget description. We expect issues to be reported to the TWDB contract manager as they appear.

A detailed scope of work describing each task, a percent of effort per each task, a time schedule for each task, and the amount of time each team member will spend on the project shall not exceed 15 pages using Times Roman 12 font, and the Statement of Qualifications shall not be more than 20 pages in length, excluding qualifications and experience of project staff and HUB plan. Applicants should be familiar with standards and requirements for the TWDB groundwater availability models. An updated guideline will be provided ([http://www.twdb.texas.gov/about/contract\\_admin/RFQ/](http://www.twdb.texas.gov/about/contract_admin/RFQ/)).

#### **Description of Funding Consideration**

Up to \$540,135 has been identified for water research assistance from the Water Assistance Fund for research on this modeling project. Following the receipt and evaluation of all Statements of Qualifications, the TWDB may adjust the amount of funding initially authorized. Oral presentations may be required as part of qualification review. However, an invitation for oral presentation is not an indication of probable selection. Up to 100 percent funding may be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services, and funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state and federal agencies. In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

#### **Deadline, Review Criteria, and Contact Person for Additional Information**

Six double-sided copies of a complete Statement of Qualifications, including the required attachments, must be filed with the TWDB prior to 12:00 noon, Friday, May 31, 2013. Statements of Qualifications must be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701; or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231. Statements of Qualifications will be evaluated according to 31 TAC §355.5 and the Statements of Qualifications Review Criteria rating form included in the TWDB's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants must contact the TWDB to obtain these guidelines.

Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research topic information, and the guidelines may be directed to Mr. David Carter at the preceding address or by calling (512) 936-6079. All technical questions should be directed to Ms. Cindy Ridgeway at (512) 936-2386.

TRD-201301656  
Kenneth Petersen  
General Counsel  
Texas Water Development Board  
Filed: April 25, 2013

### **Workforce Solutions Brazos Valley Board**

#### **Notice of Release of Request for Proposal for Electronic Document Management System**

On May 2, 2013 the Workforce Solutions Brazos Valley Board (WS-BVB) will release a Request for Proposal (RFP) for an Electronic Document Management System. The proposal requirements are contained in the RFP which may be obtained at [www.bvjobs.org](http://www.bvjobs.org). The Board is seeking one contractor to design and implement a "paperless" electronic document management system for workforce programs for

the WS-BVB. The system must support a document-heavy series of programs and paper file systems for workforce development program staff. The RFP may be viewed and printed from the Internet on [www.bvjobs.org](http://www.bvjobs.org).

#### **Intent to Bid**

Potential offerors are asked to communicate their name, mailing address, and e-mail address to the authorized contact person by May 9, 2013. This communication will inform the Agency of the offeror's interest in the RFP, ensure that all interested offerors are included on the bidder's list, are provided with the bid conference call contact information, and receive the Question and Answer document and any necessary updates to the RFP. This communication may be e-mailed or sent hard copy to the authorized contact person: Richard Rogers, [richard@sw-texas.net](mailto:richard@sw-texas.net), mailing address: P.O. Box 1296, Utopia, Texas 78884.

#### **Bid Conference Call**

A bidders' conference call will be held on May 10, 2013 at 10:00 a.m. Potential bidders who have submitted an intent to bid notice will be provided with the call information on May 9, 2013 by e-mail.

#### **Due Date**

An original and four copies of a written proposal are due at the Board's offices no later than 4:00 p.m. CST on May 30, 2013. No proposals will be accepted after this deadline. Proposals may be sent to:

Richard Rogers, Board Consultant

c/o Workforce Solutions Brazos Valley Board

P.O. Drawer 4128

Bryan, Texas 77805

ATTENTION: Response to Electronic Document Management System RFP

Or hand delivered to:

Richard Rogers, Board Consultant

c/o Workforce Solutions Brazos Valley Board

3991 East 29th Street

Bryan, Texas 77802

ATTENTION: Response to Electronic Document Management System RFP

Workforce Solutions Brazos Valley is an equal opportunity employer and provides equal opportunity employment programs and services. Auxiliary aids are available upon request to disabled individuals. Texas Relay (800) 735-2989 TDD; (800) 735-2988 voice.

TRD-201301670

Tom Wilkinson

Executive Director

Workforce Solutions Brazos Valley Board

Filed: April 26, 2013

#### **Notice of Release of Request for Proposal for Independent Financial Monitoring by a Certified Public Accountant**

On May 14, 2013 the Workforce Solutions Brazos Valley Board (WS-BVB) will release a Request for Proposal (RFP) for Independent Financial Monitoring by a Certified Public Accountant (CPA). The proposal requirements are contained in the RFP which may be obtained at [www.bvjobs.org](http://www.bvjobs.org). The Board is seeking one contractor who is a CPA to provide services to include fiscal monitoring of programs and ex-

penditures for the WSBVB. The RFP may be viewed and printed from the Internet on [www.bvjobs.org](http://www.bvjobs.org).

**Bidders Conference**

There will be no bidders conference for this procurement. Questions may be directed to Richard Rogers, Board Consultant, at (512) 963-4895 or email [richard@swtexas.net](mailto:richard@swtexas.net). A question and answer document pertaining to this procurement will be posted on the Board's web page no later than May 28, 2013.

**Due Date**

An original and four copies of a written proposal are due at the Board's offices no later than 4:00 p.m. CST on June 4, 2013. No proposals will be accepted after this deadline. Proposals may be sent to:

Richard Rogers, Board Consultant

c/o Workforce Solutions Brazos Valley Board

P.O. Drawer 4128

Bryan, Texas 77805

ATTENTION: Response to Financial Monitoring RFP

Or hand delivered to:

Richard Rogers, Board Consultant

c/o Workforce Solutions Brazos Valley Board

3991 East 29th Street

Bryan, Texas 77802

ATTENTION: Response to Financial Monitoring RFP

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TRD-201301669

Tom Wilkinson

Executive Director

Workforce Solutions Brazos Valley Board

Filed: April 26, 2013

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## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

## TITLE 1. ADMINISTRATION

### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)